
12.1 Utilities

As may be required for utility services in order to adequately serve the condominium property; provided, however, easements through a unit shall be only according to the plans and specifications for the building or as the building is actually constructed, unless approved, in writing, by the unit owner.

12.2 Pedestrian and Vehicular Traffic

For pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist, upon the common elements; and for the vehicular traffic over, through and across such portions of the common elements as may be from time to time paved and intended for such purposes.

12.3 Support

Every portion of a unit contributing to the support of the condominium building or an adjacent unit shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

12.4 Perpetual Non-Exclusive Easement in Common Elements

The common elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of units in the condominium for their use and the use of their immediate families, guests, renters, and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

12.5 Right of Access to Units.

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.

12.6 Easement for Unintentional and Non-Negligent Encroachment

In the event that any unit shall encroach upon any of the common elements for any reason not caused by the purposeful or negligent act of the unit owner or owners, or agents of such owner or owners, then an easement appurtenant to such unit shall exist for the continuance of such encroachment into the common elements for so long as such encroachment shall naturally exist; and, in the event that any portion of the common elements shall encroach upon any apartment unit, then an easement shall exist for the continuance of such encroachment of the common elements into any unit for as long as such encroachment shall naturally exist.

12.7 Air Space

An exclusive easement for the use of the air space occupied by a condominium unit as it exists at any particular time and as the unit may lawfully be altered.

12.8 Easements or Encroachments

Easements or encroachments by the perimeter walls, ceilings, and floor surrounding each condominium unit.

12.9 Easement for Overhangs

Easement for overhanging troughs or gutters, downspout, and the discharge therefrom of rainwater and the subsequent flow thereof over condominium units or any of them.

12.10 Easement for Air Space of Common Elements

An exclusive easement for the use of the area and air space occupied by the air-conditioning compressor and the equipment and fixtures appurtenant thereof, situated in and/or on common elements of the condominium, but exclusively serving one unit as the same exist in and on the Land which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air-conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, however, that the removal of same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

12.11 Recorded Easements

Easements, either burdening or benefiting the Land, include those easements in favor of Gulf Power Company recorded in Deed Book 115, Page 443, OR Book 1236, Page 1514, OR Book 1252, Page 1647, the Underground Distribution Easement recorded in OR Book 2255, Page 2087 and the Overhead Distribution Easement recorded in OR Book 2506, Page 3029; easement to Southeastern Telephone Company recorded in OR Book 332, Page 102; Entrance Improvements and Landscaping Agreement recorded in OR Book 2399, Page 3756; Access and Sign Easement Agreement recorded in OR Book 2376, Page 2156; Stormwater Drainage Easement recorded in OR Book 2376, Page 2199; and the Utility Easement Agreement recorded in OR Book 2390, Page 4706, all public records of Okaloosa County, Florida. In addition, the Land, and in particular the parking garage to be located on the Land, will be subject to a permanent parking and ingress and egress easement in favor of the owner of Hampton Inn parcel adjacent to the Land for the use of up to 59 parking spaces.

13. ASSOCIATION

In order to provide for the proficient and effective administration of this condominium, each unit owner shall become a member of a non-profit corporation known and designated as the WATERSCAPE CONDOMINIUM OWNERS ASSOCIATION, INC., organized under the laws of the State of Florida. Said corporation shall administer the operation and management of this condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions, and conditions of this Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association, the Rules and Regulations promulgated by the Association from time to time, and the laws of Florida.

13.1 Articles of Incorporation

A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "C."

13.2 Bylaws

The Bylaws of the Association shall be the Bylaws of the condominium, a copy of which is attached hereto as Exhibit "D."

13.3 Limitation Upon Liability of Association

Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

13.4 Restraint Upon Assignment of Shares in Assets

The shares of members in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to a unit.

13.5 Approval or Disapproval of Matters

Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed in accordance with the Bylaws of the Association.

13.6 Membership

The record owners of all units in this condominium shall be members of the Association and no other persons or entities shall be entitled to membership. Membership shall be established by acquisition of ownership of a fee simple interest in a condominium parcel in this condominium, whether by conveyance, devise, judicial decree or otherwise, subject to the provisions of this Declaration and by the recordation among the public records of Okaloosa County, Florida, of the deed or other instrument establishing the acquisition and designating the parcel affected thereby and by the delivery to the Association of a true copy of such recorded deed or other instrument. The new owner designated in such deed or other instrument shall thereupon become a member of the Association and the membership of the prior owner, as to the parcel designated, shall be terminated.

13.7 Voting

On all matters as to which the membership shall be entitled to vote, there shall be only one (1) vote for each unit.

13.8 Information

The Association shall make available to unit owners and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, Bylaws, other rules concerning the project and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

13.9 Financial Statements

Any holder of a first mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

13.10 Association's Rights and Restrictions

The Board of Directors of the Association shall have the right to grant permits, licenses, leases, and easements over the common elements for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the project and the reasonable operations for management of the Association and the rental program.

The Board of Directors of the Association may sell or mortgage or otherwise dispose of any personal property owned or acquired by the Association.

The Association, upon a 2/3rds affirmative vote of the membership, may purchase, sell or mortgage land and may submit land to condominium ownership under the terms of this Declaration.

13.11 Board of Directors - Eligibility.

Other than those selected by the Developer, Directors must be either Unit Owners, or an Officer, Member, or Partner of the owning entity or an Officer, Member, or Partner of an entity which is a member or general partner of the owning entity. No Director (except those selected by the Developer) shall continue to serve on the Board after he ceases to be Unit Owner or qualify as set forth above.

14. INSURANCE

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

14.1 Authority to Purchase

All insurance policies upon the condominium property shall be purchased by the Association for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear, and provisions shall be made for the issuance of certificates or mortgagee endorsements to the mortgagees of unit owners. Such policies and endorsements shall be held by the Association. Unit owners are strongly encouraged to obtain insurance coverage, at their own expense, upon the interior of their individual unit, to include floor coverings, wall coverings, ceiling coverings, electrical fixtures, appliances, air conditioning and heating equipment, water heaters, and built-in cabinets, their furniture and other personal property, and for their personal liability and living expense. All policies purchased by the Association must be written by insurance companies authorized to do business in the State of Florida, and with offices or agents in Florida.

14.2 Coverage

14.2.1 Casualty. All buildings and improvements upon the Land, including all fixtures, installations or additions comprising that part of the building or improvements within the boundaries of units and required by the Condominium Act to be insured under the Association's policies, all common element improvements located on the Land, and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude unit floor coverings, wall coverings and ceiling coverings, all furniture, furnishings and other personal property owned, supplied or installed by unit owners or tenants of unit owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets located within units. Such policies may contain reasonable deductible provisions as determined by the Board. Such coverage shall provide protection against:

14.2.1.1 Loss or damage by fire, wind, and other perils (including flood in amounts as determined by the Board of Directors unless the Board of Directors elects not to obtain), covered by a Special Cause of Loss Form.

14.2.1.2 Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

14.2.2 Public Liability. In such amounts and with such coverage as shall be required by the Board of Directors of the Association with cross liability endorsements to cover liability of the unit owners as a group to a unit owner.

14.2.3 Workmen's Compensation. As shall be required to meet the requirements of law.

14.2.4 Fidelity Bonding. The Association, at its own expense, will obtain and maintain adequate 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 and the President, Secretary, and Treasurer of the Association.

14.2.5 Association Insurance. Such other insurance as the Board of Directors of the Association, in its discretion, may determine from time to time to be in the best interest of the Association and the unit owners, including Director's liability insurance, or other insurance that an institutional mortgagee may reasonably require so long as it is the owner of a mortgage on any condominium parcel.

14.3 Premiums

Premiums for insurance policies purchased by the Association shall be paid by the Association, and shall be assessed among all unit owners as a common expense of the Association.

14.4 Assured

All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association. All insurance policies shall require *written* notification to each institutional mortgagee not less than ten (10) days in advance of cancellation of any insurance policy insuring the condominium property.

The Association shall be liable for payments of premiums, for the renewal or sufficiency of the policies, and for the failure to collect any insurance proceeds. The Association shall receive such proceeds as are paid and hold same in trust for the purposes elsewhere stated herein and for the benefit of the unit owners and their mortgagees in the following shares.

14.4.1 Common Elements. Proceeds on account of common elements shall be held in as many undivided shares as there are units—the shares of each unit owner being the same as his share in the common elements as same are hereinabove stated.

14.4.2 Units. Proceeds on account of units shall be held in the following undivided shares:

14.4.2.1 Partial Destruction. When the building is to be restored, for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner.

14.4.2.2 Mortgagee. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against units and no mortgagee shall have any right to participate in the determination as to whether or not improvements will be restored after casualty.

14.5 Distribution of Proceeds

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

14.5.1 Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be retained by the Association.

14.5.2 Failure to Reconstruct or Repair. If it is determined, in the manner elsewhere provided, that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to all unit owners in proportion to their "termination share" as defined in Paragraph 20.4—remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagee.

14.5.3 Certificate. In making distribution to unit owners and their mortgagees, the Association may rely upon a certificate of the Association made by the President and Secretary as to the names of the unit owners and their respective shares of the distribution.

14.5.4 Association as Agent. The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

15. RECONSTRUCTION OR REPAIR AFTER CASUALTY

If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

15.1 Damage to Units. Where loss or damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, any Association insurance proceeds in account of the damage, less the deductible, shall be distributed to such contractors, suppliers, and personnel for work done, materials supplied, or services required for reconstruction or repair. Payments shall be in such amounts and at such times as the unit owners may direct. The owners of damaged units shall be responsible for reconstruction and repair and shall bear the cost thereof, if any, in excess of the insurance proceeds.

15.2 Damage to Common Elements - Less than "Very Substantial". Where loss or damage occurs to the common elements, but the loss is less than "very substantial," as hereinafter defined, it shall be mandatory for the Association to repair, restore, or rebuild the damage caused by the loss, and the following procedures shall apply:

15.2.1 Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of reconstruction and repair, and shall negotiate and contract for the work.

15.2.2 Insurance Insufficient. If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the common elements, the Association shall promptly, on determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for reconstruction and repair of the property.

15.2.3 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three fourths or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur, then:

15.2.3.1 Owners' Meeting. A meeting of the Association shall be called by the Board of Directors to be held within a reasonable time after the casualty. A determination by the Board of Directors as to what is a reasonable time shall be conclusive. The purpose of the meeting shall be to determine the wishes of the membership with reference to reconstruction or termination of the Condominium, subject to the following:

15.2.3.1.1 Insurance Sufficient. If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost thereof, so that no special assessment is required, the Condominium property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the Condominium shall be terminated pursuant to Paragraph 20.

15.2.3.1.2 Insurance Insufficient. If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless at least 2/3rds of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, it shall be terminated pursuant to Paragraph 20. If 2/3rds of the voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.

15.2.4 Disputes. If any dispute shall arise as to whether “very substantial” damage has occurred, a determination by the Board of Directors shall be binding on all unit owners.

15.3 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the insurance proceeds and they shall first be applied to reconstruction of the common elements and Association property and then to the units; if there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be retained by the Association. However, if special assessments were made pursuant to paragraph 15.2.3.1.2 hereof, then all or a part of the remaining money shall be returned to the unit owners paying said assessments pro rata, according to the amount each paid, up to the full amount each paid, and then to the Association.

15.4 Equitable Relief. In the event of substantial damage to the Condominium property, and if the property is not reconstructed or repaired within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is commenced within such time following the damage or destruction as is determined by the Board of Directors to be reasonable and the work proceeds without intentional and unwarranted delay to completion.

15.5 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors.

16. ASSESSMENTS

The making and collecting of assessments against unit owners for common expenses shall be the obligation of the Board of Directors pursuant to the Bylaws and subject to the following provisions:

16.1 Share of the Common Expenses

Each unit owner shall be liable for a proportionate share of the common expenses and shall be entitled to an undivided share of the common surplus, such shares being set forth in Exhibit “B,” a unit owner, regardless of how his 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 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 amounts paid by the owner.

16.2 Non-Waiver

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

16.3 Interest, Administrative Late Fees, and Application of Payments

Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest rate allowed by the laws of the State of Florida from the date when due, until paid. In addition to interest, the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of the assessment for each delinquent installment that is late. All payments received by the Association upon account shall be first applied to interest, then to any administrative late fee, then to any costs and reasonable attorneys fees incurred in collection, and then to the delinquent assessment.

16.4 Lien for Assessments

The Association has a lien on each condominium parcel to secure the payment of assessments subject to and limited by the provisions of Section 718.116, Florida Statutes.

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. No such lien shall be effective longer than 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel.

Where a unit owner is delinquent in the payment of assessments, and the Association institutes collection procedures by pursuing a claim of lien, for the purposes of that action, the Association may include the assessments due for the remaining budget year. If accelerated, those assessments become due and payable on the date the claim of lien is filed, regardless of the fact they might not otherwise have been billed or payable until a later date. Further, the claim of lien may secure interest owed on assessments and all reasonable costs and attorneys fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to satisfaction of the lien.

16.5 Collection and Foreclosure

The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of 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 shall give notice to the unit owner of its intention to foreclose its lien at least thirty (30) days before the foreclosure action is filed. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due the Association covered by the lien enforced. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

16.6 Liability of Mortgagee, Lienor, or Judicial Sale Purchaser for Assessment

A unit owner, regardless of how his 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 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 amounts paid by the owner. 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 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.

Notwithstanding the foregoing, 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 unpaid assessments that become due prior to the mortgagee's acquisition of title is limited as set forth in Section 718.116, Florida Statutes.

16.7 Unpaid Assessments - Certificate

Any unit owner, mortgagee, or other lienholder shall have the right to require from the Association a certificate showing the amount of unpaid assessments against the condominium parcel to which he has an interest. Within fifteen (15) days after receiving a written request, the Association shall provide a certificate stating all assessments and other monies owed to the Association by the unit owner. Any person other than the owner who relies upon such certificate shall be protected thereby.

16.8 Priority of Lien

Any lien of the Association for common expenses, assessments or other charges becoming payable on or after the date of recordation of the first mortgage on any unit shall be subordinated to the lien of the first mortgage.

16.9 Operating Fund/Transfer Fee

A one-time start up fee for working capital equal to two months maintenance fee plus an amount equal to a unit's undivided share of the common elements and common expenses times the initial annual insurance premium for casualty, workmen's compensation, liability and any other insurance policies obtained by the Association, shall be paid upon closing with the Developer and placed in an operating fund of the Association.

16.10 Lenders' Notices

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the unit number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

16.10.1 Any condemnation loss or any casualty loss which affects a material portion of the project or any unit estate on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable.

16.10.2 Any delinquency in the payment of assessments or charges owned by an owner of a unit estate subject to a first mortgage held insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days.

16.10.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

16.10.4 Any proposed action which would require the consent of a specified percentage of mortgage holders.

17. COMPLIANCE AND DEFAULT

Each unit owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Bylaws and Rules and Regulations adopted pursuant thereto, and said documents and rules and regulations as they may be amended from time to time. Failure of unit owners to comply therewith shall entitle the Association or other unit owners to the following relief in addition to the remedies provided by the Condominium Act.

17.1 Negligence

A unit owner shall be liable for the expenses of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family or his or their guests, invitees, employees or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

17.2 No Waiver of Rights

The failure of the Association or any unit owner to enforce a covenant, restriction, or other provision of the Condominium Act, this Declaration, or any of the exhibits attached hereto, shall not constitute a waiver of the right to do so thereafter.

18. AMENDMENT OF DECLARATION

Unless otherwise required by this Declaration or by statute, this Declaration may be amended by a two-thirds (2/3) vote of the members of the Association, except for those amendments specifically reserved to the Developer by this Declaration or otherwise by statute to be made without a vote of the unit owners. In accordance with section 718.110(11), Florida Statutes, the consent or joinder of some or all of the mortgagees of units to or in amendments to this Declaration shall not be required; unless, however, such proposed amendment materially affects the rights or interest of the mortgagee as set forth in sections 718.110(4) and (8), Florida Statutes. And, except for amendments relating to the material alteration or configuration of a unit or units, amendments creating a time share estate in a unit or units, amendments that materially alter or modify the appurtenances to a unit or units, or amendments that change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, it shall be presumed that amendments to this Declaration do not materially affect the rights or interests of mortgagees.

19. DEVELOPER'S UNITS AND PRIVILEGES

19.1 Developer

The Developer, at the time of filing of this Declaration, is the owner of all of the real property, individual units, and appurtenances comprising this condominium. Therefore, the Developer, until all of the units have been sold and closed, shall be irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease, or rent units to any person approved by the Developer. Said Developer shall have the right to transact upon the condominium property any business necessary to consummate the sale of units, including, but not limited to, the right to maintain models, have signs, staff employees, maintain offices, use the common elements, entertain prospective purchasers and show units. Any sales office, signs, fixtures or furnishings, or other tangible personal property belonging to the Developer shall not be considered common elements and shall remain the property of the Developer.

19.2 Amendment of Plans

Developer reserves the right to change the interior design and arrangement of all units so long as Developer owns the units so changed and altered, provided such change shall be reflected by an amendment of this Declaration, and provided further that an amendment for such purpose need be signed and acknowledged only by the Developer and need not be approved by the Association or Condominium unit owners, whether or not elsewhere required for an amendment.

19.2.1 An amendment of this Declaration reflecting such alteration by the Developer need be signed and acknowledged only by the Developer and need not be approved by the Association, Condominium unit owners or any other persons whomsoever.

19.2.2 Nothing herein set forth in this Declaration shall be constructed as prohibiting the Developer from removing, or authorizing the removal of, any party wall between any units, as long as Developer owns the unit affected thereby, in order that said units may be used together as a single unit. In each event, all assessments, voting rights, and shares in the Common Elements shall be determined as if such units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that several units are used as one, to the intent and purpose that the unit owner of such combined unit shall be treated as the unit owner of as many units as have been combined.

19.3 Developer's Liability for Assessments

During the period from the date of the recording of this Declaration until the earlier of the following date (the "Guaranty Expiration Date"): (a) the last day of the twelfth (12th) complete calendar month after the applicable recording date, or (b) the date that control of the Association is transferred to unit owners other than the Developer as provided in the Bylaws and the Condominium Act, the Developer shall not be obligated to pay the share of common expenses and assessments attributable to the units owned by the Developer. In lieu thereof, the regular assessments for common expenses imposed on each unit owner, other than the Developer, prior to the Guaranty Expiration Date, shall not increase during said period over the amounts set forth on attached Exhibit E, and the Developer shall be obligated to pay that amount of common expenses actually incurred during such period which are in excess of the assessments receivable from other unit owners at the guaranteed levels and/or other income receivable by the Association. Provided also, so long as the Association has maintained all insurance coverages required by Section 718.111 (11) (a) of the Condominium Act, the Common Expenses incurred during the Guaranty Period resulting from a natural disaster or an Act of God, which are not covered by insurance proceeds from the insurance maintained by the Association may be assessed against all Unit Owners, including the Developer, owning Units in accordance with their share of Common Expenses on the date of such natural disaster or Act of God. After the Guaranty Expiration Date, the Developer shall have the option of extending the guaranty for two additional six-month periods, or paying its share of the assessments attributable to units it then owns.

19.4 Amendment

Notwithstanding anything herein to the contrary, the provisions of this section shall not be subject to any amendment until the Developer has sold all of the units in WATERSCAPE, A CONDOMINIUM.

20. TERMINATION

The condominium may be terminated in the following manner in addition to the manner provided in the Condominium Act:

20.1 Destruction

In the event that it is determined in the manner elsewhere provided that the condominium building shall not be reconstructed because of very substantial damage, the condominium plan of ownership will be thereby terminated without agreement.

20.2 Agreement

The condominium may be terminated by the approval, in writing, of all of the owners of the units therein and by all record owners of mortgages thereon. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of not less than seventy-five percent (75%) of the common

elements is obtained, in writing, not later than sixty (60) days from the date of such meeting, then the approving owners shall have an option to buy all of the units of the other owners for the period ending on the ninetieth (90th) day from the day of such meeting. Such approvals shall be irrevocable until the expiration of the option and, if the option is exercised, the approval shall be irrevocable. Such option shall be upon the following terms:

20.2.1 Exercise of Option. The option shall be exercised by delivery or mailing by certified mail, to each of the record owners of the units to be purchased, of an agreement to purchase, signed by the record owners of units who will participate in the purchase. Such agreement shall indicate which unit will be purchased by each participating owner and shall provide for the purchase of all of the units owned by owners not approving the termination, and the effect of said agreement shall be to create a separate contract between each seller and his purchaser.

20.2.2 Price. The sale price for each unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement and, in the absence of agreement as to price, it shall be determined *by arbitration* in accordance with the *then existing* rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

20.2.3 Payment. The purchase price shall be paid in cash.

20.2.4 Closing. The sale shall be closed within thirty (30) days following the determination of the sale price.

20.3 Certificate

The termination of the condominium in either of the foregoing manners shall be evidenced by a certificate of the Association, executed by the President and secretary, certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Okaloosa County, Florida.

20.4 Shares of Owners After Termination

After termination of the condominium, unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the unit owners. Such undivided shares of the unit owners shall be known as "termination shares" and shall be ascertained as follows:

20.4.1 The Board of directors, upon advisement by one or more independent appraisers, shall determine the value of each unit and appurtenances thereto prior to termination and of the total condominium property prior to termination. The total value of all units and appurtenances thereto shall equal the value of the condominium property.

20.4.2 The undivided share of each unit owner after termination shall equal the appraised value of his unit and appurtenance thereto divided by the appraised value of the total condominium property terminated.

20.4.3 The undivided share of each unit owner after termination shall be referred as a "termination share". After termination, the words "termination share" shall be to the Secretary of the Association by each such owner, substituted for the words "share in the common elements" or similar phrases used in this Declaration in order to ascertain the rights and duties of the holders of termination shares.

20.5 Severability and Invalidity

The invalidity, in whole or in part, of any covenant or restriction or any section, subsection, sentence, clause, phrase or word, or the provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, shall not affect the validity of the remaining portions which shall remain in full force and effect.