

Q. Additional Cross Easements. The developer of the Market Rate Units and Developer granted mutual cross easements for multiple purposes, including the placement of a fence separating the Condominium Property and the property of the Market Rate Units, ingress and egress, and utilities, which Easement Agreement and Modification of Existing Easement is recorded in Official Records Book 2354 at Page 2132, Public Records of Monroe County, Florida. The Association has the obligation, inter alia, to maintain the roadway surface for the ingress and egress areas of the easement property and the lighting system for such area. All property lying between the fence and the Condominium Property shall be maintained by the Association.. The Developer has also granted the developer of the Market Rate Units pursuant to that certain Amended and Restated Easement Agreement a easement for the location of a portion of the Water Cooling System for the Market Rate Units, ingress, egress and maintenance to and for the Water Cooling System. The Amended and Restated Easement Agreement is recorded in Official Records Book 2354 at Page 2091, Public Records of Monroe County, Florida.

ARTICLE VII
Condominium Association

A. Incorporation; Operation; Board of Administrators. Developer shall create a condominium association to be known as Railway Condominium Association, Inc., which shall be a not-for-profit Florida corporation and which shall operate the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of the Master Lease, Articles of Incorporation and By-Laws (copies of which are annexed hereto as Exhibits D and E, respectively), the Declaration and the Act. In the event of conflict concerning the powers and duties of the Association as set forth in the Act, the Declaration, Articles of Incorporation and By-Laws, the Act shall control the Declaration, the Declaration shall control the Articles of Incorporation and the Articles of Incorporation shall control the Bylaws. The terms, conditions and obligations of the Master Lease shall control in all respects except when in conflict with the Act. The affairs of the Association shall be governed by a Board of Administration (Board of Directors) consisting of five (5) persons, all of whom shall be members of the Association.

B. Automatic Membership and Voting Rights. Every Unit Owner automatically shall be a member of the Association upon becoming the Owner of such Unit and shall remain a member until his ownership ceases for any reason, at which time his membership shall cease automatically. Other than as an incident to a transfer of title to a Unit, membership in the Association shall not be transferable and any attempted transfer shall be null and void. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance to membership in the Association, or to any of the rights or privileges of such membership. Each Unit Owner shall be entitled to one vote for each Unit owned. When more than one person holds an interest or interests in any Unit, the vote for such Unit shall be limited to one vote as the Owner among themselves determine. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

C. Limitation Upon Liability of the Association. Notwithstanding its duty to maintain and repair 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 latent conditions of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements made by or on behalf of any Unit Owner(s).

D. Eligibility for Board Members; Developer's Representation on the Board and Voting Rights. In order to be eligible for board membership, a person must meet the requirements set forth in this Declaration. Except for members of the Board eligible to be appointed by the Developer, all Board members must be owners of a Unit or an officer, director, partner or other designated person of a Unit owned by an entity other than a natural person. A person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for board membership. Developer shall have the right to elect Directors to the Board and to remove and replace any person(s) elected by it, as is set forth in the Articles of Incorporation and By-Laws. No Director elected by Developer shall be required to disqualify himself from voting upon any contract or lease between Developer and the Association where Developer may have a pecuniary or other interest. Developer shall not be required to disqualify itself in any vote that may come before the membership of the Association upon any contract or lease between Developer and the Association where Developer may have a pecuniary or other interest. All rights in favor of Developer reserved in this Declaration, the Articles of Incorporation and the By-Laws are assignable to and may be exercised by Developer, its successors and assigns.

E. Assessments. The Board shall have the power to fix, determine and collect from all Unit Owners, as provided in the By-Laws, the sums necessary and adequate to provide for the Common Expenses of the Condominium and such other expenses as are provided for in this Declaration and the By-Laws. The Board shall furnish prompt notice to Unit Owners of all assessments payable. A Unit Owner may not be excused from payment of the Unit Owner's share of Common Expenses unless all other Unit Owners are likewise proportionately excluded from payment, except as provided in subsection E.6. and E.9 below.

1. Allocation. All assessments shall be levied in proportion to each Unit Owners Common Interest, i.e., 1/38. Should the Association be the owner of any Unit(s), the assessment which otherwise would be due and payable to the Association on such Unit(s), shall be levied equally among all of the Unit Owners excluding the Association, based upon their Common Interests, reduced by any income derived from the leasing of such Unit(s) by the Association.

2. Billing Unit Owners for Electrical Power and/or Gas. Pursuant to Section 19.04 of the Master Lease, the Ground Lessor shall be the exclusive provider of the electric

power service to the Condominium during the term of the Master Lease. Each Unit Owner shall be responsible for contracting with Keys Energy Services the electrical power of the individual Unit. The electric utility provider will provide the Condominium with electric power for all common areas as a Common Expense.

3. Special Assessments. Should the assessments prove to be insufficient to pay the costs of operation of the condominium, or should any emergency arise, the Board shall have the authority to levy such additional assessment(s) as it may deem necessary, subject to obtaining the Association Membership's approval of such Special Assessment by majority vote at a duly called meeting of the Association at which a quorum is present. The specific purpose(s) of any Special Assessment 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(s) set forth in such notice or returned to the Unit Owners; provided, however, that upon completion of such specific purpose(s), any excess funds shall be considered Common Surplus.

4. Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or Unit mortgagee, the Association shall provide a certificate stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

5. Payment; Default. The assessments levied against each Unit Owner shall be payable at the main office of the Association in such installments and at such time as may be determined by the Board of Directors as provided in the By-Laws. The payment of any such assessment shall be in default if it is not paid to the Association within ten (10) days of its due date. Assessments and installments thereof not paid within ten (10) days from its due date shall bear interest at eighteen percent (18%) from the date due until paid and shall be further subject to an administrative late fee equal to the greater of \$25.00 or five percent (5%) of each delinquent Assessment or installment.

6. Liability of Acquiring Unit Owner for Delinquent Assessments. In the event that a Unit is to be acquired by a subsequent Unit Owner at a time when payment of any assessment by the transferring Unit Owner shall be in default (whether or not a notice of lien has been recorded by the Association), then the subsequent Unit Owner shall be jointly and severally liable with the previous Unit Owner for all unpaid assessments that came due up to the time of the transfer of title to the subsequent Unit Owner. Notwithstanding such joint and several liability, the subsequent Unit Owner acquiring title to the Unit shall pay the amount owed to the Association within thirty (30) days after transfer of the Unit. This liability by the subsequent Unit Owner is without prejudice to any right the subsequent Unit Owner may have to recover from the previous Unit Owner the amounts paid by the subsequent Unit Owner. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Unit

and proceed in the same manner as provided in this Article for the collection of unpaid assessments.

7. Liens; Enforcement.

(a) The assessments shall be levied against each Unit Owner(s) who is bound to pay them. Common Expenses and assessments shall constitute a lien against each Unit and shall have the priority afforded by law. Actions to enforce such claims shall be in conformity with the law. Each Unit Owner also shall be liable personally to the Association for the payment of all such assessments and for interest on any delinquent payment and for all costs of collecting such payment and interest thereon, including reasonable attorneys fees. No Unit Owner may exempt himself from liability for any assessment levied against him by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way. Assessments that are unpaid after the due date shall bear interest at the maximum rate of interest chargeable to an individual as permitted by the laws of the State of Florida. Once interest has accrued, any subsequent payment shall be applied first to payment of interest and collection costs and then to the payment of the assessment first due.

(b) Each such lien shall secure: (i) all advances for taxes, payments on account or superior mortgages, liens or encumbrances and any other payments which the Association may pay in order to preserve and protect its lien, and (ii) all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien upon the Unit.

(c) Each lien herein granted to the Association shall be effective upon recording a notice of lien in the Public Records of Monroe County, Florida. A notice of lien shall state the name and address of the Association, the description of the Unit encumbered thereby, the name of the record owner, the amount due and the date when due. No lien shall continue for a period longer than one (1) year after the claim of lien shall have been recorded, unless within that time an action to enforce the lien shall be commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, interest costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. Such claim of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such lien, the same shall be satisfied of record.

(d) The Association, acting through the Board, shall have the right to assign to Developer or to any Unit Owner(s) or third party its lien rights for the recovery of any unpaid assessments.

(e) A lien granted to the Association may be foreclosed. No foreclosure action may be filed until at least thirty (30) days after the Condominium 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 attorneys' fees or costs. The notice must be delivered personally to the Unit Owner or made and delivered by registered or certified mail, return receipt requested. If, after diligent search and inquiry, the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the notice shall be given as required by law. The notice requirements of this subsection are satisfied if the Unit records a notice of contest of lien as provided in the Act.

(f) If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit. 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. Furthermore, if the Unit is rented or leased to anyone during the pending 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 that does not prevail in the foreclosure action.

(g) Institution of a suit at law to collect payment of any delinquent assessment shall not prevent the Association from thereafter seeking enforcement of the collection by foreclosure of any sums then owing to it. Proceeding by foreclosure to effect such collection shall not preclude the institution of a suit at law to collect any sum then owing to it.

(h) A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the Unit Owner and shall be subject to all of the provisions of this Declaration, the By-Laws, the Rules and Regulations and applicable law. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by grantee.

(i) The liability of a Institutional 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 (a) the Unit's unpaid common expenses and regular periodic assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (b) one percent (1%) 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. For the purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the mortgage.

8. Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued, on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

9. Developer's Right to be Excused from Assessments through the Guarantee Assessments. Developer, while offering Units for sale may elect to be excused from payment of assessments against those unsold Units for a stated period of time after the Declaration is recorded. Should the Developer so elect, Developer must pay Common Expenses incurred during such period which exceed regular periodic assessments against other Unit Owners. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a Unit in the Condominium. If the Association, while controlled by Developer, has maintained all insurance coverage required under the Act, Common Expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the Association, may be assessed against all Unit Owners owning Units on the date of such natural disaster or act of God, and their respective successors and assigns, including Developer with respect to Units owned by Developer. In the event of such an assessment, all Units shall be assessed in accordance with Section 718.115(2) of the Act. Developer, while an Owner of Units, and while offering the Units for sale, may be excused from payment of assessments against those unsold Units for the period of time Developer has guaranteed to all purchasers or other Unit Owners that assessments will not exceed a stated dollar amount and that Developer will pay any Common Expenses that exceed the guaranteed amount. Such guarantee shall be stated, if so elected by Developer, in the purchase contract with purchasers of Units. Developer may provide that, after the initial guarantee period, Developer may extend the guarantee for one or more stated periods. If the purchase contract or other written agreement between Developer and a majority of Unit Owners other than Developer provides for Developer to be excused from payment of assessments under this subsection, only regular periodic assessments for Common Expenses as provided for in the prospectus and disclosed in the estimated operating budget shall be used for payment of Common Expenses during any period in which Developer is excused. No funds which are receivable from Unit purchasers or Unit Owners and payable to the Association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such Common Expenses.

F. Budget and Accounting. The Board shall adopt a budget for each fiscal year. Such budget shall contain estimates of all costs and expenses for the proper operation, management, and maintenance of the Condominium, including any costs of insurance acquired

by the Association pursuant to Section 718.111(11), Florida Statutes including costs and contingent expenses required to participate in a self-insurance fund that is authorized and approved by the Parcel Owners, a reasonable allowance for contingencies and reserves, and shall take into account the projected income that is to be applied in reduction of the amounts required to be collected as an assessment each year. Common Expenses also shall include the cost of maintaining Common Elements and Limited Common Elements. Assessments shall be established based upon such budget. Upon adoption of the budget, a copy of same shall be delivered to each Unit Owner, although failure to deliver a copy of the budget to each Unit Owner shall not affect the liability of any Unit for such assessment. The Association shall maintain accounting records that shall be open to inspection by Unit Owners or their authorized representatives at reasonable times. Written summaries of such accounting records shall be furnished to Unit Owners or their representatives at least annually.

G. Reserves.

1. Reserves for Capital Expenditures and Deferred Maintenance. Each annual budget shall include sums to be collected and maintained as reserves to be used for capital expenditures and deferred maintenance. The amount to be reserved shall be computed by the Board by means of a formula based upon estimated remaining useful life and estimated replacement cost of each reserve item. Such reserves may be waived or reduced for a fiscal year by the affirmative vote of a majority of the Voting Interest of the Association at a duly called meeting of the Association. If such a meeting shall have been called and the necessary vote for waiver or reduction shall not have been attained or a quorum shall not have been attained, the reserves as set forth in the budget shall go into effect.

2. General Operating Contingency Fund. Each annual budget may include in the operating portion of the budget a sum to be collected and maintained as a general operating contingency fund, which sum may be used to meet contingency deficiencies from time to time existing as a result of delinquent payment of assessment by Unit Owners or as a result of emergencies or to pay other costs or expenses placing financial stress upon the Association. The amount to be included in the operating portion of the budget allocated to such operating contingency fund and collected therefore shall not exceed ten percent (10%) of the current annual assessment levied against all of the Unit Owners.

H. Collections. All monies collected by the Association shall be treated as the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws. All funds shall be maintained separately in the Association's name. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes. Although all funds and the Common Surplus shall be held for the benefit of the members of the Association, no member shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. When a Unit

Owner shall cease to be a member of the Association, the Association shall not be required to account to him for any share of the funds or assets of the Association, or for any sums that he may have paid to the Association.

I. Alterations.

1. By Unit Owners. No Unit Owner shall make or cause to be made any exterior alteration, addition or improvement to his Unit or any structural alterations, additions or improvements to his Unit or the Common Elements, including Limited Common Elements ("alterations") without the Association's prior written consent. The penetration of the Common Element or Limited Common Element structure or membrane by the use of screws, bolts, nails or similar devices shall be strictly prohibited without prior consent of the Board. The Board shall have the obligation to answer (i.e., approve, disapprove or request further information) any written request sent certified mail, return receipt requested, by a Unit Owner for approval of a proposed alteration in such Unit Owners Unit or appurtenant Limited Common Element(s) within thirty (30) days after such request is received. All alterations by the Unit Owners shall be made in compliance with all applicable law, rules and ordinances and regulations and this Declaration. A Unit Owner making or causing to be made any alterations agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless from any liability arising therefrom.

2. By the Association. The Association shall have the right, with the written consent of all Unit Owners to make or cause to be made alterations (as distinguished from repairs and replacements) to the Common Elements.

3. By Developer. Anything to the contrary notwithstanding, the foregoing restrictions regarding alterations of Units shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Association or other Unit Owners, to make alterations, improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, to and upon any Unit owned by Developer; provided, however, Developer shall not materially alter or modify the appurtenances to a Unit, or change the proportion or percentage of which the owner of the Unit shares the Common Expenses and owns the Common Surplus unless all the record owners of all other Units and all record owners of liens on it join in the execution of an amendment for same and unless all the record owners of all other Units approve such amendment. Any amendment to this Declaration required by a change made by the Developer pursuant to this subparagraph shall be adopted by Developer without the consent or joinder of any Unit Owner or mortgagee and shall be deemed a non-material amendment.

J. Maintenance and Repair.

1. By Unit Owners. All maintenance, repairs and replacements of, in or to any Unit, whether structural or non-structural, ordinary or extraordinary, including, without

limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment servicing the Unit, fixtures and outlets, appliances, carpets and other floor covering, all interior surfaces and the entire interior of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense. Notwithstanding the Unit Owner's responsibility to maintain the heating and air-conditioning equipment, all Unit Owners shall arrange for the maintenance and/or replacement of all heating and air-conditioning equipment through the Association. The Association shall select an insured contractor with whom the Unit Owner may elect to enter into a periodic maintenance contract or contract for service on an as-needed basis. No Unit Owner, person or contractor other than the contractor selected and approved by the Association shall be permitted access to the roof of the Condominium Property where the compressors for the heating and air-conditioning systems are located.

2. By the Association. Except to the extent: (a) expressly provided to the contrary herein; or (b) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements or Limited Common Elements (including, without limitation, all security systems as originally installed by Developer (and thereafter modified by the Association) that service individual Units, all parking space maintenance shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense. The Association shall be responsible for the maintenance, repair and replacement of all of the Common Elements including all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to more than one (1) Unit. Should any incidental damage be caused to any Unit by virtue of any work that may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association, shall, at its expense, repair such incidental damage. The costs of such maintenance on the Common Elements shall be a Common Expense for the Unit Owners. The costs of maintenance of Limited Common Elements shall be a Common Expense for the Unit Owners. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.

K. Hurricane Preparation. Removable hurricane shutters are not mandatory for Units. To insure uniformity in appearance and installation, all hurricane shutters shall be approved by the Association prior to installation. When not in use as part of hurricane preparation and protection, all hurricane shutters shall be stored as directed from time to time by the Association in the Rules and Regulations.

L. Repair or Replacement of Air-Conditioning Units. Air-conditioning compressors for all Units are located on the first floor of the respective Building for the Units, the elevation of

which is below the minimum flood elevation set by the Federal Emergency Management Agency. In the event of a flood, any damage sustained by the air-conditioning compressors shall be the responsibility of the Association, the cost of which shall be treated as a Common Expense.

ARTICLE VIII
Rights to Sell, Lease and Mortgage

A. Compliance with Work Force Housing Income Criteria. No Unit Owner may sell his or her Unit or any interest therein, except by complying with the Key West Work Force Housing Code. Prior to any change in ownership of a Unit, including by sale, assignment, devise or otherwise, the Unit Owner shall be required to provide documentation to the Developer, Association and governmental authorities such as the City Planner for the City of Key West as required from time to time by the Key West Work Force Housing Code in a form prescribed by the City of Key West from time to time proving that the intended transferee is eligible to occupy the Unit prior to a change in ownership of the Unit.

B. Maximum Sales Price on the Resale of Units. No Unit Owner may sell his or her Unit for a sales price (the "Maximum Resale Price") that exceeds the limits set forth below. The Maximum Resale Price shall be the lesser of the maximum sales price then permitted for the Unit under the Key West Work Force Housing Code in effect at the time the Unit is offered for sale or the purchase price paid by the selling Unit Owner, exclusive of any closing costs, adjustments or prorations ("Unit Purchase Price"), plus an increase of 2.5% per year (rounded up or down to the nearest year at the time the Unit is offered for sale) of the Unit Purchase Price, compounded annually. By way of example and assuming that the maximum sales price permitted for the Unit under the Key West Work Force Housing then in effect was \$299,000 and Unit Purchase Price paid by the selling Unit Owner was \$250,000 and the selling Unit Owner owed the Unit for a period of 1 year and 8 months, then the Maximum Resale Price would be \$250,000 plus [\$250,000 x .025 or \$6,250] plus [\$256,250 x .025 or \$6,406.25] or a Maximum Resale Price of \$262,656.25. The State of Florida Form D-219 filed in connection with the filing of the Sublease Agreement in favor of the selling Unit Owner may be used to establish the selling Unit Owner's Unit Purchase Price.

C. Leasing of Units. All Units are intended to be owner-occupied. The subleasing of Units is prohibited with the exception of the rights reserved by Developer under Article V and under the following circumstances subject to the approval of the Association:

1. During the period of an Owner's required absence from the Lower Keys for official military duty;
2. During the period of an Owner's illness requiring hospitalization for more than thirty (30) days;
3. During the period of an Owner's family emergency requiring Owner to leave

the Lower Keys for more than thirty (30) days.

Any sublease shall be to a person or persons eligible for occupancy pursuant to Section 122-1469 of the Key West Work Force Housing Code, as the same may be amended. Further, rent shall be limited pursuant to Section 122-1469 of the Key West Work Force Housing Code, as the same may be amended.

The Association, in its discretion and with the consent of the City of Key West Planning Department, shall have the right to amend, modify, extend, decrease or terminate the foregoing exceptions by rule that shall not require an amendment to this Declaration.

D. Right of First Refusal. Developer is hereby granted the right of first refusal for the purchase of any Unit as more particularly set forth in this Article VIII.

1. Notice to Developer. Any Unit Owner who intends to sell his or her Unit shall give notice of such intention to Developer prior to making or accepting any offer to sell an Owner's Unit. Developer shall have the right to purchase the Unit (or in its discretion, find a suitable buyer to purchase the Unit) at the Maximum Resale Price. Developer shall have this option for a period of thirty (30) days from the date the Unit Owner provides written notice to Developer of the Unit Owner's intention to sell the Unit. In the event that Developer elects not to exercise its right of first refusal and the Unit Owner fails to sell the Unit within six (6) months from the date the Unit Owner provided notice to Developer, then these Right of First Refusal provisions shall be reimposed and selling Unit Owner must provide Developer with a new notice of the Unit Owner's intent to sell before selling the Unit to a third party.

2. Sale Voidable. Any purported sale of a Unit in violation of this subsection shall be voidable at any time at the election of Developer, and Developer shall have the right to institute legal proceedings to void the conveyance. Said Owner shall reimburse Developer for all expenses (including attorneys' fees and disbursements incurred in connection with such proceedings).

3. Release by Developer of the Right of First Refusal. The right of first refusal contained in this subsection may be released or waived by Developer only in the manner provided in herein. In the event Developer shall release or waive its right of first refusal as to any Unit, such Unit may be sold or conveyed to any purchaser who qualifies under the then current City of Key West Work Force Housing Code.

4. Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by Developer stating that the provisions of this subsection have been satisfied by a Owner, or stating that the right of first refusal contained therein has been duly released or waived by Developer and that, as a result thereof, the rights of Developer thereunder have terminated (as to that sale only) shall be conclusive with respect to all persons who rely on such certificate in good faith. Developer shall furnish such certificate upon request to any Owner

in respect to whom the provisions of this subsection have, in fact, terminated or been waived. No fee shall be charged by Developer in connection with the furnishing of such certificate.

5. Exceptions. The provisions of this subsection shall not apply to the transfer, gift or conveyance of any Unit under the following circumstances:

- (a) In the event the Owner of a Unit dies, Developer shall, unless good cause shown, consent to a transfer of the Unit to the spouse, child(ren) or other heirs, devisees, legatees or beneficiaries of the Unit Owner provided that such persons state, in writing, under oath that they have reviewed the terms of this Declaration and the Master Lease and acknowledge that the transferee of the Unit will comply with all terms and conditions of this Declaration, the Master Lease and the Key West Work Force Housing Code. The transferee must demonstrate to the City of Key West, or its designee, that they qualify for ownership and/or occupancy of the subject Unit as provided under the Key West Work Force Housing Code as it then exists. In the event the intended transferee does not meet the requirements of this Declaration, the Master Lease and/or the Key West Work Force Housing Code, such intended transferee shall not occupy the Unit and shall not be entitled to possession, except and only to the extent that the City of Key West permits same, under conditions that it determines furthers the goals and public purpose of the Key West Work Force Housing Code.
- (b) The transfer by an Owner to such Owner's spouse, adult children, parents, parents-in-law, adult siblings or a trustee, where the Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trust, shall be exempt from the provisions of this subsection where persons state, in writing, under oath that they have reviewed the terms of this Declaration and the Master Lease and acknowledge that the transferee of the Unit will comply with all terms and conditions of this Declaration and the Master Lease, including, without limitation, the occupancy restrictions under the Key West Work Force Housing Code and this Declaration. The transferee must demonstrate to the City of Key West, or its designee, that they qualify for ownership and/or occupancy of the subject Unit as provided under this Declaration and the Master Lease and the Key West Work Force Housing Code as it then exists.

- (c) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Unit shall be bound by, and such Owner's Unit subject to, the provisions of this subsection.

E. Mortgage of Units. As more particularly set forth in the Master Lease, Unit Owners may obtain mortgage loans and encumber their respective Unit(s) with one or more mortgages; provided, however:

1. A Unit Owner may not obtain a mortgage in an amount greater than the Maximum Resale Price referred to in paragraph B of Article VIII above; and
2. In the event of foreclosure sale by a Unit Owner's mortgagee or the delivery of an assignment or other conveyance to a Unit Owner's mortgagee in lieu of foreclosure with respect to any Unit subject to the provisions of the Master Lease, said mortgagee, or the purchaser at foreclosure, shall comply with the provisions of this Declaration regarding affordability and the Key West Work Force Housing Code. No sale of any Unit shall be permitted at an amount in excess of that allowed under the City of Key West Affordable Guidelines and shall otherwise fully comply with all provisions of this Declaration. Any Unit accepted in lieu of foreclosure or as to which a mortgagee intends to foreclose shall be subject to the Developer's right of first refusal as set forth in this Declaration. Any such mortgagee may purchase a Unit upon which it holds a mortgage at a foreclosure sale, or otherwise acquire the Unit as a part of the collection of debt due to such mortgage, but any purchaser or occupant of such Unit must meet the requirements of the Key West Work Force Housing Code. Nothing herein shall preclude potential purchasers who meet the requirements of the Key West Work Force Housing Code and approved by Lessor (or its assigns) in advance from bidding at any foreclosure sale and, where successful, purchasing the subject Unit at the foreclosure sale price in accordance with the Master Lease and this Declaration; and
3. All Unit Owners, by purchasing a Unit recognize that it would be contrary to the fundamental affordable housing concept of the Master Lease and this Declaration and an incentive to abuse a Unit Owner's authorization to encumber their subleasehold interests in a Unit with a mortgage if the Unit Owner could realize more in loan or sale proceeds than the Unit Owner's permitted purchase or resale price as a result of any transaction. Accordingly, any and all Unit Owners hereby irrevocably assign to the Ground Lessor any and all net proceeds from the sale of any interest in the their respective Units remaining after payment of costs of foreclosure and satisfaction of the lien of any mortgage which would have otherwise been payable to the Unit Owner, to the extent such net proceeds exceed the net proceeds that the Unit

Owner would have received had the interests been sold pursuant to the restrictions in this Declaration. Each Unit Owner hereby authorizes and instructs the mortgagee or any party conducting the closing of a sale or through an unauthorized transfer to pay the amount of said excess directly to the Ground Lessor. In the event, for any reason, such excess proceeds are paid to a Unit Owner, such Unit Owner hereby agrees to promptly pay the amount of such excess to the Ground Lessor.

ARTICLE IX
Insurance and Reconstruction

Insurance covering the Condominium Property and the Association Property and reconstruction of the Condominium shall be governed by the Master Lease and the following provisions:

A. Purchase, Custody and Payment.

1. Purchase and Proof of Premium Payment. All insurance policies described in the Master Lease and described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued either by an insurance company authorized to do business in Florida or a reputable surplus lines carrier. Proof of premium payments shall be delivered to the Ground Lessor as required in Section 10.05 of the Master Lease.

2. Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Institutional Lender which owns Unit mortgages securing a greater aggregate indebtedness than is owned to any other Institutional Lender (the "Primary Institutional Lender") in the first instance, if requested thereby.

3. Named Insured. The named insured shall be the Ground Lessor, where applicable, the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

4. Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association and certificates of all policies require under the Master Lease shall be delivered to Ground Lessor as required in Section 10 of the Master Lease, and Insurance Trustee (if appointed).

5. Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional Lender who holds a mortgage upon a Unit covered by the policy.

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

6. Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

B. Coverage. The Association shall maintain insurance or self-insure as permitted under the Act for the following:

1. Casualty and Windstorm. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements 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 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, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, 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, to the extent that any of same are required to be repaired or replaced by the Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by windstorm and fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to Building and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

2. Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with all coverage's as required under the Master Lease, Section 10.02, i.e., \$1,000,000.00 for general aggregate; \$1,000,000.00 for products/completed operations (coverage for three years after project completion); \$500,000.00 for personal and advertising liability; \$1,000,000.00 for each occurrence and \$1,000,000.00 contractual liability, and with a cross liability endorsement to cover liabilities of the Ground Lessor and Unit Owners as a group to any Unit Owner, and vice versa. The Association may also

obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

3. Workmen's Compensation and other mandatory insurance, when applicable.

4. Flood Insurance covering the Common Elements, Association Property and Units if required by the Primary Lender or FNMA/FHLMC, or if the Association so elects.

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

6. Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

7. Insurance Requirements by Ground Lessor. The Association shall maintain such additional insurance as required from time to time pursuant to Section 10 of the Master Lease.

8. Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, shall have the following endorsements, if required: (i) agreed amount and (ii) inflation guard.

C. Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Paragraph.

D. Premiums. Except where the Association elects to be a self-insurer as permitted by Section 718.111, Florida Statutes, premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

E. Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors as provided below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

1. Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in subparagraph 2 below.

2. Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each

such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

3. Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

F. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

1. Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.

2. Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

3. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Subsection E above, and distributed first to all Institutional Lenders in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

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

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

H. Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be

the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

I. Benefit of Mortgagees. Certain provisions in this Article IX entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

J. Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

K. Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

L. Reconstruction or Repair After Fire or Other Casualty; Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Subject to the terms and conditions of Section 10.07 of the Master Lease, if 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional Lenders approve such resolution, the Condominium Property will not be repaired, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Paragraph the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if

appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

M. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

N. Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

1. Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

a. Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional Lender which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.