



ORIGINAL

COST RECOVERY GROUP, INC.

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Tel: 727-573-5787, Fax: 727-573-5675, E-MAIL: powck@aol.com

September 19, 2002

Ms. Blanca S. Bayo
Florida Public Service Commission
Director, Division of Records & Reporting
2549 Shumard Oak Blvd
Tallahassee, Florida, 32301

021005-ELL

Dear Ms. Bayo:

Enclosed for filing please find the following the documents:

- 1) Original and seven copies of Luxury Resorts International, Inc. d/b/a The Atlantic, Petition for Emerency Variance or Waiver From the Individual Metering Requirement of Rule 25-6.049(a) of the Florida Administrative Code. 10138-02
- 2) Letter From Luxury Resorts International Requesting Representation by Marc Mazo. 10139-02
- 3) Affidavit of Marc Mazo. 10140-02

I would appreciate your date stamping this letter signifying the receipt of the above documentation and returning a copy to me by return mail in the self addressed stamped envelope provided.

Thank you for your help in this matter.

Yours very truly,

Marc D. Mazo
Authorized Representative
Luxury Resort International, Inc. d/b/a The Atlantic

Cc: Bromley Kelly, LRI
Enclosures

02 SEP 20 PM 1:34

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PSC-BUREAU OF RECORDS

STATE OF FLORIDA
BEFORE THE PUBLIC SERVICE COMMISSION

IN RE:

Luxury Resort International, Inc
d/b/a/ The Atlantic

DOCKET # 021005 EU

Petitioner
_____ /

**PETITION FOR EMERGENCY VARIANCE OR WAIVER
FROM RULE 25-6.049(5) (a)
OF THE FLORIDA ADMINISTRATIVE CODE**

COMES NOW the Petitioner Luxury Resort International, Inc.
d/b/a The Atlantic and hereby petitions the Florida Public
Service Commission for a variance or waiver pursuant to Section
#120.542 of the Florida Statute, Section #28-104.002 F.A.C., and
Section #28-104.002 of the F.A.C..

I. Applicable Rule : The applicable rule from which
petitioner seeks a variance or waiver is Rule 25-6.049(5) (a) of
the Florida Administrative Code which states in pertinent part
that;

(5) (a) "Individual electric metering by the utility company
shall be required for each separate occupancy unit of new
commercial establishments, residential buildings, condominiums,
cooperatives, marinas, and trailer, mobile home and recreational
vehicle parks for which construction is commenced after January
1, 1981.

The literal requirements of Rule 25-6.049(5) (a) provide that
the Petitioner should maintain individual electric metering for
each unit of its condominium hotel. However, a conflict between
Section 25-6.049(5) (a) and Section 25-6.049(5) (a) (3) arises when
the facts of this particular case are taken into consideration.

Luxury Resorts International, Inc., is the developer of a
beach front Condominium Hotel to be called The Atlantic.

DOCUMENT NUMBER DATE
10138 SEP 20 88

FPSC-COMMISSION CLERK

Ownership structure of the Atlantic will be pursuant to Chapter 718, Florida Statutes, however, the Atlantic will operate in accordance with Chapter 509.242 of the Florida Statutes as a Public Lodging Establishment. It will be a "Hotel" as defined by Section 509.242(1)(a), F.S., and a "Resort Condominium" as defined by Section 509.242(1)(c), F.S..

Pursuant to 509.242(1)(c), a "Resort Condominium" is any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which advertises and holds out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Section 509.242(1)(a) defines a hotel as any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing services generally provided by a hotel and recognized as a hotel in the community in which it is located or by the industry. Based on this definition, the Atlantic will also be a hotel.

Section 25-6.049(5)(a)(3) of the rule provides certain exceptions to the individual metering requirement of the rule. In pertinent part the exception states:

(5)(a)(3) "For electric used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and occupied operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent home, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, **motels, hotels, and similar facilities.**" (Emphasis Supplied)

II. Underlying Statute F.S. 366.05(1): The applicable portion of the underlying statute indicates that the commission shall have the power to prescribe fair and reasonable rates and charges, classifications, standards of quality measurements, and service rules and regulations to be observed by each public utility. Rule 25-6.049(5)(a) & 25-6.049(5)(a)(3) have been adopted to accomplish this principle. The implementation of fair and reasonable rates and charges by the public utility companies in Florida is a goal of the Public Service Commission established by the legislature. See F.S. 366.03.

In addition, pursuant to docket # 810308-EU September 2, 1981, it appears that the intent of Rule 25-6.049(5)(a) and Rule 25-6.049(5)(a)(3) is to serve the public interest regarding energy conservation. Petitioner believes both the underlying statute requiring fair and reasonable rates, and the purpose of energy conservation are both better served, if in fact, petitioner's facility is master metered.

III. Type of Action Requested: Petitioner requests the Commission grant an emergency variance or waiver from the literal requirement of Rule 25-6.049(5)(a) wherein condominiums must be individually metered, and allow Luxury Resorts International, Inc. to master meter the Atlantic.

The reason for the emergency request pursuant to Section #28-104.005, is as follows:

1) Petitioner, its Architect, General Contractor, and Florida Power & Light have been collaborating on this project for many months. The Atlantic was at all times planned to operate as a full service first class hotel, with ownership structure under

Chapter 718, Florida Statutes. Original discussions with all parties led to the conclusion that The Atlantic was clearly a similar facility as defined in Rule 25-6.049(5)(a)(3, F.A.C., and therefore exempt from any individual metering requirement.

2) The project is permitted and ready to break ground, and any delays would be cause a financial hardship on the Petitioner.

3) As a result of recent review of the plans for the Atlantic by counsel for FP&L, it was determined that FP&L should not allow the Petitioner to construct the Atlantic with master metering without first having requested and recieved a variance or waiver from the Florida Public Service Commission.

4) All architect and engineering plans currently permitted for the Atlantic show master metering of the facility. To change the plans and implement individual metering would be a hardship on the Petitioner as a result of architect and engineering costs, and costs of delay in construction to draw new plans and have them permitted.

IV. Facts Which Demonstrate Substantial Hardship and/or

Violation of Principles of Fairness: Luxury Resorts International, Inc., (hereinafter LRI), is the developer of The Atlantic Condominium Hotel, located at 601 North Ft. Lauderdale Beach Boulevard, Ft. Lauderdale, Florida, 33304. LRI intends to sell occupancy units at the Atlantic to owners seeking an investment in a 1st Class Beachfront Resort.

Petitioner was granted permission by the City Commission of the City of Ft. Lauderdale for the constuction of a hotel, restaurant, and retail facility on September 8, 1999. (See Attached Exhibit "1").

May 24, 2002, the Zoning Administrator for the City of Ft. Lauderdale, Constuction Services Bureau, approved the use of a temporary trailer and parking lot affiliated with an approved site plan for construction of the Petitioner's one hundred twenty-four (124) room 5-star luxury hotel with restaurant and retail. (See Exhibit "2"). And, on July 23, 2002, the City of Ft. Lauderdale issued a building permit for the development of Petitioner's 15 story condo/hotel. (See Exhibit "3").

Ft. Lauderdale Code-ULDR, Section B. A-1-A Beachfront Area (ABA) District, Section (5), titled, "List of Permitted Uses", (See Exhibit "4"), states that the use of the property developed in the ABA district is limited to the following:

- i. "Hotels and suite hotels.
- ii. Restaurants
- iii. Moped/scooter rental as a conditional use.

Petitioner has entered into a management contract with Starwood Hotels (Exhibit "5"), for the operation of the resort. The marketing brochure for the Atlantic (Exhibit "6"), indicates that it is the newest member of "The Luxury Collection", a group of elite international hotels operated by Starwood Hotels & Resorts Worldwide, Inc.. Many of the features and amenitites to be offered at the Atlantic are comparable to other five star resorts and include: 1) world-class concierge service, 2) 24 hour doorman and valet, 3) ocean view poolside cafe and bar, 4) indoor/outdoor gourmet dining, 5) 24 hour room service, 6) boardroom and conference facilities, 7) housekeeping services, 8) 7,000 square feet European spa.

The Atlantic anticipates 100% of the participation in the rental pool with all units being dedicated to the use of Starwood Hotels. The Atlantic intends to register with the Florida Department of Business and Professional Regulation to engage in the business of providing transient lodging accommodations and will be registered with the Florida Department of Revenue to collect and remit sales taxes on revenue realized from providing such transient accommodations.

The petitioner, operating under the name of The Atlantic will be engaged in the business of providing short term (daily, weekly) lodging to vacationers as do hotels and motels in the adjacent and surrounding areas. The Atlantic will compete directly for room night business with nearby hotels and motels from Miami Beach to Boca Raton. To maintain its market share petitioner will regularly advertise and promote its business with travel agents and in trade shows both in this country and abroad. The Atlantic plans on utilizing a full color marketing brochure as one of the many methods to promote its business and keep the units occupied with guests. A copy of the marketing brochure is attached as Exhibit "6".

The Atlantic will maintain a front desk in the lobby area of the resort for guest registration. All guests must check-in and check-out at the front desk in the same manner as a hotel.

Telephone service for the Atlantic will be provided through a master telephone PBX with all calls ringing directly into the switchboard as a hotel or motel. Guest rooms will be furnished with calling instructions and all charges will be listed in compliance with the Department of Business Regulation, the FCC,

and the PSC. To maintain this type of telephone operation, which is similar to most modern day hotels and motels, requires an investment of capital and time and effort of management.

Petitioner's contract with Starwood Hotels is indicative of the intent to operate the Atlantic as an exclusive world class resort. Starwood will employ a general manager who is responsible for the operation and care of the resort. His job duties are similar to those persons holding the title of general manager in any other resort hotel or motel of its size, including oversight and supervision of housekeeping, maintenance, security, guest services, marketing and advertising. It is the general manager's responsibility to operate the resort in accordance with the approved budgets.

It is also the responsibility of the general manager to do the best job he can to compete with other hotels and motels in the area for guest-room nights. Rates for room nights must be kept in line with the competition. Advertising dollars must also be expended to fill the needed amount of room nights. These principles exist for hotels and motels and also exist for the Atlantic based on its manner of operation.

Savings analysis based on the estimated annual KWH usage for the Atlantic shows the difference of what the resort would pay for electric if all units were individually metered and served by FP&L on its residential rate, as opposed to being master metered and served on FP&L's general service demand rate. The savings analysis is attached as Exhibit "7".

If the Atlantic is not master metered it will pay approximately 25% to 30% more for the same electric to operate as

nearby hotels and motels that are master metered and receive service from FP&L at the 'GSD' rate. This creates a substantial hardship on the petitioner in its efforts to compete in the room rental business and pay all the associated costs (including taxes) of operating a public lodging establishment. It also violates principles of fairness in that other hotels and motels in the surrounding area will spend less money on electricity and be able to spend more on advertising or employee salaries, or for other expenses of improving their room night business.

In addition, according to Order # PSC-01-0626-PAA-EU, issued March 14, 2001, re: the petition of Dunes of Panama and Sundestin Homeowners Association, for master metering, the FPSC stated in pertinent part that, "[T]he types of facilities that are exempted from the individual metering requirement are those in which, due to their nature or mode of operation, it is not practical to attribute usage to individual occupants. For example, hotels and motels are commercial enterprises in which the occupants of the units are not billed for their use of electricity, but rather pay a bundled rate for the use of a room for a limited time."

The Atlantic falls into this category. It will be impractical, if nearly impossible, to attribute and bill electric usage to the daily and weekly guests of the resort. They will be billed a bundled rate for the limited use of the rooms rented while vacationing at The Atlantic.

Petitioner is now moving into the construction stage of this project and has been working with its architects, engineers and FP&L for quite some time. However, it was only recently that FP&L realized that the actual ownership structure of the Atlantic was

condominium pursuant to Chapter 718, Florida Statutes. Therefore, even though the Atlantic clearly intends to operate as a hotel, FP&L has taken the position that master metering should only be allowed upon the grant of a variance or waiver by the FPSC.

While the Atlantic believes that it falls under the category of similar facilities which is intended to be exempt from the individual metering requirement of Rule 25-6.049, it is not the intention of the Petitioner to make such an interpretation an issue. FP&L is not opposed to the master metering of the Atlantic if the FPSC grants a waiver, and has written a letter to that effect. (See Exhibit "8").

V. Conservation Issue: The development of Rule 25-6.049 was to encourage conservation of electricity. The PSC, its Staff, and IOU's in Florida have adhered to the philosophy that the end user will be more inclined to be conscious of conservation if such user is made aware of his or her electric use and associated costs. Section(5)(a) of the rule follows this theory by requiring individual metering. However, the implication which can be derived from this section is that condominiums are residential in nature, therefore, by requiring individual metering the owner occupant will be made aware of monthly electric usage and associated costs and will be more inclined to conserve electricity.

This theory is not applicable in the instant case since the Atlantic will operate as a transient rental facility catering to the traveling public. The owner/investors of units at the Atlantic will not be the ones responsible for energy conservation at the resort. The general manager and/or chief engineer at the

Atlantic will have that responsibility similar to other exclusive resorts in the Starwood family of hotels.

If individually metered, the monthly electric bills for the Atlantic will be forwarded by the power company to over one hundred twenty-four owners located in all parts of the country and abroad, with no ability to implement energy conservation except through the general manager or chief engineer of the facility.

Recognizing that timeshare resorts are similar in nature to hotels and motels, in 1997 the Commission amended Rule 25.6-049(5)(a)(3) to include timeshare resorts in the exception from the individual metering rule. The theory being that conservation would be better served by the resort receiving one master bill for electric instead of many individual bills. In this manner the resort manager would have more awareness of total electric usage for the timeshare resort and hopefully, as a result, pay closer attention to energy conservation.

The nature of timeshare resorts did not change by the commission's action. Nor did the characteristics of their electric usage. Timeshare resorts are still owned and operated as condominiums and used primarily by the owners for vacation weeks. Where timeshare owners live in the units for a week or more at a time during their vacation, petitioner's regular transient rental business will generally be for shorter periods and less like an at home living environment. As such, its electric usage characteristics will be more similar to hotels or motels than that of most timeshare resorts.

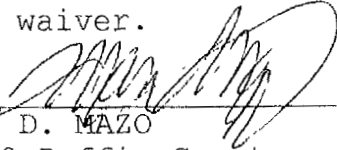
VI. Conclusion By granting Petitioner a waiver or variance from the individual metering requirements of Rule 25.6-049, the interests of the public relating to energy conservation would be better served. By receiving one bill each month at the facility the general manager and/or chief engineer will be able to be more efficient in efforts to control and conserve electric usage. In addition, the principles of fairness would be met in that the owner/investors at the Atlantic will receive the benefit of lower electric costs due to master metering, as due its owner/investor counterparts at timeshare resorts. Petitioner would also be able to compete with hotels and motels in the area on a more even basis as petitioner would not be paying higher costs for electric than its hotel/motel competitors.

VII. Duration of Variance or Waiver - The Developer, LRI, will at all times maintain voting control of the Board of Directors of the Atlantic Condominium Association, (See Declaration of Condominium, Exhibit "9", Articles of Incorporation, Exhibit "10", and Bylaws, Exhibit "11"). Therefore, the unit owner/investors will not have the ability to alter the intended use of the facility as a 1st Class Resort Hotel. In addition, the rules governing use of the units at the Atlantic will not change by granting of the variance or waiver from the individual metering requirements of Rule 25.6-049.

In any event, Petitioner requests the variance or waiver be permanent with the condition that it continues to operate as a public lodging establishment in accordance with Chapter 509.242 of the Florida Statutes. In the event there is a change in the Ft. Lauderdale zoning ordinance, or a change in ownership that

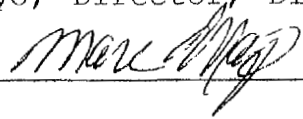
affects the operation of the facility as a 1st Class Resort Hotel, the variance or waiver would terminate and the condominium units be subject to the individual metering requirements of Rule 25.6-049(5) (a).

WHEREFORE, for all of the foregoing reasons, Petitioner respectfully requests the Public Service Commission grant its request for a variance or waiver.



MARC D. MAZO
14252 Puffin Court
Clearwater, Florida 33762
Telephone (727)573-5787
Facsimile (727)573-5675
Authorized Representative
Luxury Resorts International, Inc.

I HEREBY CERTIFY that an original and seven (7) copies of the foregoing Petition for Variance or Waiver have been furnished by U.S. Mail this 19th day of September, 2002, to the Public Service Commission, Attn: Ms Blanca s. Bayo, Director, Division of Records and Reporting.



MARC D. MAZO

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2	Approval City of Ft. Lauderdale For Temporary Trailer For Construction of The Atlantic
3	Copy of Building Permit
4	City of Ft. Lauderdale Zoning Ordinance Sowing Permitted Use of ABA area (No Residential)
5	FP&L Letter - No Objection to Variance Request
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8	Hotel Management Agreement
9	Declaration of Atlantic Hotel Condominium
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To	NADINE	From	SHARON		
Co./Dept.	HEIDI DAULS	Co.			
Phone #		Phone #	828-5000		
Fax #	763-3894	Fax #			

RESOLUTION NO. 99-116

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, GRANTING A BEACH DEVELOPMENT PERMIT FOR THE CONSTRUCTION OF A HOTEL, RESTAURANT AND RETAIL USE AND APPROVAL OF SETBACK REDUCTIONS ON PROPERTY LOCATED AT 607 NORTH ATLANTIC BOULEVARD IN FORT LAUDERDALE, FLORIDA IN AN ABA ZONING DISTRICT AS A DEVELOPMENT OF SIGNIFICANT IMPACT.

WHEREAS, Section 47-12 of the Unified Land Development Regulations ("ULDR") of the City of Fort Lauderdale, Florida provides that no development of property in the central beach area shall be permitted without first obtaining a beach development permit from the City of Fort Lauderdale in accordance with the provisions and requirements of Section 47-12 of the ULDR of the City of Fort Lauderdale, Florida; and

WHEREAS, the Applicant, MLK Development, Inc., is proposing to construct a hotel, restaurant and retail use, and is requesting setback reductions on property located at 607 North Atlantic Boulevard in Fort Lauderdale, Florida; and

WHEREAS, the site lies within an ABA zoning district which is within the central beach area, and the proposed use is a development of significant impact as provided in Section 47-12 of the ULDR of the City of Fort Lauderdale, Florida; and

WHEREAS, the Planning and Zoning Board (PZ Case No. 26-R-99) at its July 21, 1999 meeting considered the Application for Development Permit ("ADP") submitted by the Applicant and the report and recommendation submitted by the Planning and Economic Development Department and has recommended that a beach development permit be granted; and

WHEREAS, the City Commission has reviewed the ADP submitted by the Applicant for construction of a hotel, restaurant and retail use and request for setback reductions on property located in an ABA zoning district in Fort Lauderdale, Florida and the reports and recommendations of the Development Review Committee, Planning and Economic Development Department and Planning and Zoning Board and desires to approve the ADP;

Exhibit "1"

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the proposed construction of a hotel, restaurant and retail use and request for setback reductions on property located at 607 North Atlantic Boulevard in Fort Lauderdale, Florida as set out in the ADP as finally approved by the Development Review Committee which is located in an ABA zoning district as a development of significant impact, complies with the provisions of Section 47-12 of the ULDR of the City of Fort Lauderdale, Florida, and a beach development permit is hereby granted subject to the conditions imposed by the Development Review Committee, Planning and Zoning Board and City Commission.


SECTION 2. That pursuant to the provisions of Section 47-12 of the ULDR of the City of Fort Lauderdale, Florida, the proper City officials are hereby authorized to issue the necessary building and use permits subject to the conditions imposed by the Development Review Committee, Planning and Zoning Board and City Commission.

ADOPTED this the 8th day of September, 1999.



Mayor
JIM NAUGLE

ATTEST:



City Clerk
LUCY MASLIAH

(C:\99\RES09\SEPT9\99-116.WPD

**CITY OF FORT LAUDERDALE
CONSTRUCTION SERVICES BUREAU
SITE PLAN LEVEL I – STAFF REVIEW**

*NOTICE OF DETERMINATION***

Date: May 16, 2002

Case Number: 26-R-99 (A)

Location: 601 N. Fort Lauderdale Beach Boulevard

Applicant: Luxury Resorts International/Aztec Leisure Corporation (The Atlantic)

Zoning District: ABA (A-1-A Beachfront Area)

Request: Approval of a temporary trailer and parking lot affiliated with an approved site plan for construction of a one hundred twenty four (124) room 5-star luxury hotel with restaurant and retail.

Staff Findings: Pursuant to Sec. 47-19.2DD, a temporary trailer must be reviewed in conjunction with a development plan or as an amendment to an approved development plan (Site Plan Level I Review).

On September 8, 1999, through Resolution No. 99-116, the City Commission of the City of Fort Lauderdale granted a Beach Development Permit for the construction of a 5-star luxury hotel, restaurant and retail use and approval of setback reductions on property located at 607 North Atlantic Boulevard in Fort Lauderdale, Florida in an ABA Zoning District as a Development of Significant Impact.

City Commission denied approval of an amendment to the site plan on March 15, 2001.

Dispute Resolution Settlement Agreement signed on August 3, 2001.

City Commission approved Dispute Resolution Settlement Agreement on September 5, 2001.

Project received Final DRC on March 27, 2002.

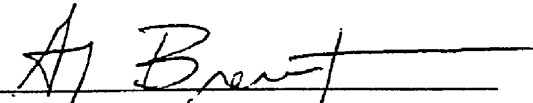
Determination: Approved. The proposed temporary trailer is approved to be used as a temporary and accessory use, for new construction of the development approved for the site (hotel, restaurant, and retail), subject to the following conditions:

Exhibit "2"

Conditions:

1. Trailer is used only in conjunction with uses permitted on this site.
2. Trailer must have a matching skirt at base on all sides.
3. Trailer must be removed within 2 weeks after the issuance of a certificate of occupancy or termination of site plan approval, whichever occurs first, and shall be removed if the building permit has expired and has not been re-issued within 180 days of expiration.

Determination Approved By:


[Zoning Administrator or designee]

APPROVAL DATE: 5-24-02

Staff Present:

Lois Udvardy, Mike Ciesielski, Christine Fisher

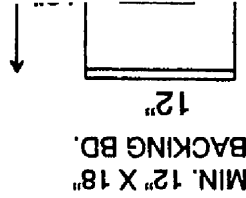
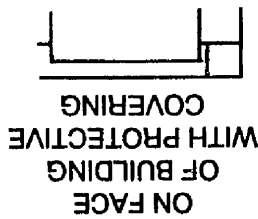
Staff Contact Person and Phone Number: Christine Fisher, Planner II 828-5293

**** Please be advised that Administrative Approval is the first step of the development review process. A building permit must be obtained subsequent to this approval.**

Rev. 6/6/00

Exhibit "2A"

50.012



THIS PERMIT CARD MUST BE DISPLAYED ON THE FRONT OF THE JOB BY ONE OF THE FOLLOWING METHODS

DISPLAY THIS CARD ON FRONT OF JOB

CITY OF FORT LAUDERDALE BUILDING PERMIT

PERMIT
02040218

DATE
07/23/2002

ADDRESS
601 N FT LAUD BEACH BLVD

OWNER
MLK DEV INC

CONTRACTOR
STILES CORPORATION

PURPOSE
COMM NEW MAS BLD >3 FLOORS
CONSTRUCT 15 STORY CONDO/HOTEL "THE AT

SUBDIVISION
BIRCH OCEAN FRONT 2 RESUB 26-3

BLOCK 0 LOT 0001 ZONE ABA

CERTIFICATE OF OCCUPANCY MUST BE SECURED BEFORE THIS BUILDING CAN BE USED FOR ANY PURPOSE

DO NOT REMOVE THIS CARD BEFORE COMPLETION

FOR INSPECTIONS CALL 761-5191
BETWEEN 8:00 AM AND 3:30 PM

FORT LAUDERDALE CODE—ULDR

5. *List of permitted uses—PRD district.*
- a. Developments of significant impact.
 - i. Hotels and suite hotels.
 - ii. Conference centers and other public meeting or performance facilities or tourist attractions.
 - iii. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities, including restaurants as a part of a hotel, a conference center complex or a shopping arcade or mall with at least fifty thousand (50,000) square feet of gross floor area.
 - iv. Residential.
 - v. Parking structures.
 - vi. Other uses catering to tourists as approved by the planning and zoning board.
 - vii. Marinas as a conditional use. See Section 47-24.3.
 - viii. Moped/scooter rental as a conditional use. See Sec. 47-24.3.
 - b. Developments of intermediate impact. Parking lots and temporary parking lots.
 - c. Developments of limited impact. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable. ~~§ SIGRS.~~
6. *[Reserved.]*
7. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

* B. *A-1-A Beachfront Area (ABA) District.*

- 1. *Setbacks.*
 - a. No structure shall be constructed, remodeled or reconstructed so that any part of the structure is located within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan, and within twenty (20) feet of any other public right-of-way, unless the development or redevelopment of the structure is approved as if it were a development of significant impact. In addition, those yards fronting on People Streets must meet the requirements of Section 47-12.4.C.



- b. Yards not abutting a public right-of-way.
 - i. Side yard: ten (10) feet.
 - ii. Rear yard: twenty (20) feet.
- c. The side and rear yard setbacks are the minimum requirements. Unless otherwise approved as a development of significant impact, in no case shall the yard setback requirements be less than an amount equal to one-half the height of the building when this is greater than the above minimums.

2. *Height.*

- a. Except as expressly provided for in subsection B.2.b, no structure shall be constructed, remodeled or redeveloped so that any part of the structure exceeds the following height standards:
 - i. Within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan and along any other public right-of-way, thirty-five (35) feet;
 - ii. No structure shall exceed two hundred fifty (250) feet in height.
- b. Notwithstanding the height limitation set out in subsection B.2.a, a beach development permit may be issued that exceeds the height limitations set out therein according to the following provisions:
 - i. An increase in the maximum height on any parcel of land proposed for development of five percent (5%) if the proposed development has a rating of at least a five (5) on the design compatibility and community character scale in subsection B.6.
 - ii. An increase in the maximum height on any parcel of land proposed for development of ten percent (10%) if the proposed development has a rating of at least a seven (7) on the design compatibility and community character scale in subsection B.6.
 - iii. An increase in the maximum height on any parcel of land proposed for development of twenty percent (20%) if the proposed development has a rating of at least nine (9) on the design compatibility and community character scale in subsection B.6.
- c. No structure shall exceed three hundred (300) feet in height.
- d. No portion of a structure in excess of thirty-five (35) feet in height shall exceed the height limitations provided in Sec. 47-23.6, Beach Shadow Restrictions.

3. *Floor area ratio.*

- a. Except as expressly provided in subsections B.3.b and c, no structure shall be developed or redeveloped so that the floor area ratio is less than two (2) or more than four (4).

FORT LAUDERDALE CODE--ULDR

- b. Notwithstanding the floor area ratio limitations of subsection B.3.a, a beach development permit may be issued for development that exceeds the floor area ratios set out herein according to the following provisions:
 - i. An increase in the floor area ratio on any parcel of land proposed for development of five percent (5%) if the proposed development has a rating of at least a five (5) on the design compatibility and community character scale in subsection B.6 of this district.
 - ii. An increase in the floor area ratio on any parcel of land proposed for development of ten percent (10%) if the proposed development has a rating of at least a seven (7) on the design compatibility and community character scale in subsection B.6 of this district.
 - iii. An increase in the floor area ratio on any parcel of land proposed for development of twenty percent (20%) if the proposed development has a rating of at least a nine (9) on the design compatibility and community character scale in subsection B.6 of this district.
- c. Notwithstanding the floor area ratio limitations set out in subsection B.3.a, a beach development permit may be issued for development that is below the minimum floor area ratio set out herein according to the following provisions:
 - i. The proposed development is located on a parcel of land that is not suitable for large scale development because of the condition and character of structures located on abutting parcels of land; and
 - ii. The proposed use of the property is consistent with a destination resort; and
 - iii. The proposed use is served by off-street parking at a ratio of one and one-half (1½) times the required parking for the ABA district for the proposed use; or
 - iv. The character, location or design of the structure will enhance and promote the development and redevelopment of the ABA district as a destination resort.
- 4. *Required parking.* Except as expressly provided in Section 47-20, Parking and Loading Requirements, no structure shall be developed or redeveloped so that the off-street parking available to service the parcel proposed for development is less than that required pursuant to Section 47-20, Parking and Loading Requirements.
- 5. *List of permitted uses--ABA district.*
 - a. Developments of significant impact.
 - i. Hotels and suite hotels.
 - ii. Restaurants.
 - iii. Moped/scooter rental as a conditional use. See Sec. 47-24.3.

- b. Developments of intermediate impact.
 - i. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities.
 - ii. Parking garages.
 - iii. Other uses catering to tourists as approved by the planning and zoning board.
 - c. Developments of limited impact.
 - i. Parking lots.
 - ii. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure. ~~± SIGNS~~
 - iii. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable.
6. *Design compatibility and community character scale—ABA district.*
- a. In the event the developer of a parcel of land in the ABA district desires to deviate from the minimum and maximum requirements of this district, for height or FAR the developer may submit the design of the proposed development for rating according to the following design compatibility and community scale:
 - i. Distinctive design that reflects positively on the overall character of the city: one (1) point;
 - ii. Architectural character that reflects a particular sensitivity to the history and culture of south Florida: one (1) point;
 - iii. Color and composition that reflects the natural colors and composition of south Florida: one (1) point;
 - iv. Architectural design that represents a deviation from "sameness": one (1) point;
 - v. Building orientation that relieves the monotony of building massing and scale along A-1-A: one (1) point;
 - vi. Accessible pedestrian spaces that are integrated into public pedestrian spaces and corridors along A-1-A: one (1) to three (3) points depending on the area of the pedestrian area according to the following:
 - a) Up to five thousand (5,000) square feet of pedestrian area: one (1) point; and
 - b) Greater than five thousand (5,000) square feet of pedestrian area: one-tenth (0.1) point for each additional two thousand (2,000) square feet of pedestrian area above five thousand (5,000) square feet up to a maximum of two (2) points;

FORT LAUDERDALE CODE—ULDR

- vii. Distinctive public facilities that contribute to the destination resort character of the central beach area including plazas, courtyards and parks: one-tenth (0.1) point for each one thousand (1,000) square feet of distinctive public facilities up to a maximum of two (2) points;
 - viii. Lot aggregation: one-tenth (0.1) point for each one thousand (1,000) square feet of land area proposed for development above twenty-five thousand (25,000) square feet up to a maximum of two (2) points; and
 - ix. Consolidation of previously parcelized land: five-tenths (0.5) point for each five thousand (5,000) square feet of land that is assembled into the parcel of land proposed for development up to a maximum of two (2) points.
- b. The determination of a design compatibility and community character rating shall be available only as a part of a beach development permit for a development of significant impact.

7. [Reserved.]

8. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

C. *Sunrise Lane (SLA) District.*

1. *Setbacks.*

a. Front yard:

- i. Twenty (20) feet; or
- ii. Ten (10) feet if:
 - a) Shade trees are planted along the right-of-way where the reduction is granted; and
 - b) Any building on the development site is set back at least twenty (20) feet from the edge of the vehicular travel lane closest to the development; or
- iii. Zero (0) feet if development fronts on State Road A-1-A, N.E. 9th Street or Sunrise Lane.

b. Side yard:

- i. Ten (10) feet; or
- ii. Zero (0) feet if a building on an abutting parcel is built to the front property line, and the side property line is shared with the proposed development, and if the front line of the proposed building continues the same line as the front line of the abutting building or deviates from the front line of the abutting building by no more than ten (10) feet.



August 30, 2002

Mr. Bromley T. Kelly
Interlink Hospitality Corp.
1815 Griffin Road
Suite 202
Dania, FL 33004

RE: The Atlantic - 607 N. Atlantic Blvd. (AIA), Ft. Lauderdale, Florida

Dear Mr. Kelly:

I understand that you intend to file a petition with the Florida Public Service Commission ("FPSC") for a variance or waiver of the individual metering requirement of Rule 25-6.049(5)(a), Florida Administrative Code. Florida Power & Light Company ("FPL") does not object to your waiver request based on the information that you have provided to FPL which indicates that although The Atlantic will be created as a condominium, it will operate more in the nature of a transient facility such as a hotel.

Should the FPSC grant your request for waiver, I would ask that you promptly forward me a copy of the FPSC order granting the request so that FPL may complete the design necessary for the provision of electric service to your project.

If you have any questions, please do not hesitate to contact me at (954) 717-2076.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew A. Macon', with a long horizontal line extending to the right.

Matthew A. Macon
Business Account Manager
Florida Power & Light Company



**The ATLANTIC
ELECTRIC BILLING COMPARISON
RESIDENTIAL RATE COMPARED TO GSD - 1
(BASED ON ESTIMATED USAGE AT 1000KWH PER MONTH)**

GENERAL SERVICE DEMAND

VS

RESIDENTIAL

CUSTOMER CHARGE \$390.48
(Based on 1 bill \$32.54 X 12)

CUSTOMER CHARGE \$7,812.00
(Based on 124 bills X \$5.25 X 12)

ENERGY CHARGE

ENERGY CHARGE

1,488,000 KWH X \$0.015280 \$22,736.64

1st 750 per unit (based on 124 units)
1,116,000 KWH X \$0.04152 \$46,336.32

KWH over 750
372,000 KWH X \$0.05092 \$18,942.24

FUEL CHARGE

FUEL CHARGE

1,488,000 KWH X \$0.026350 \$39,208.80

Total
1,488,000 KWH X \$0.026530 \$39,476.64

DEMAND CHARGE

DEMAND CHARGE

2856 KW X \$8.15 \$23,276.40

NA

TOTAL ELECTRIC COST **\$85,612.32**

TOTAL ELECTRIC COST **\$112,567.20**

ESTIMATED ANNUAL SAVINGS

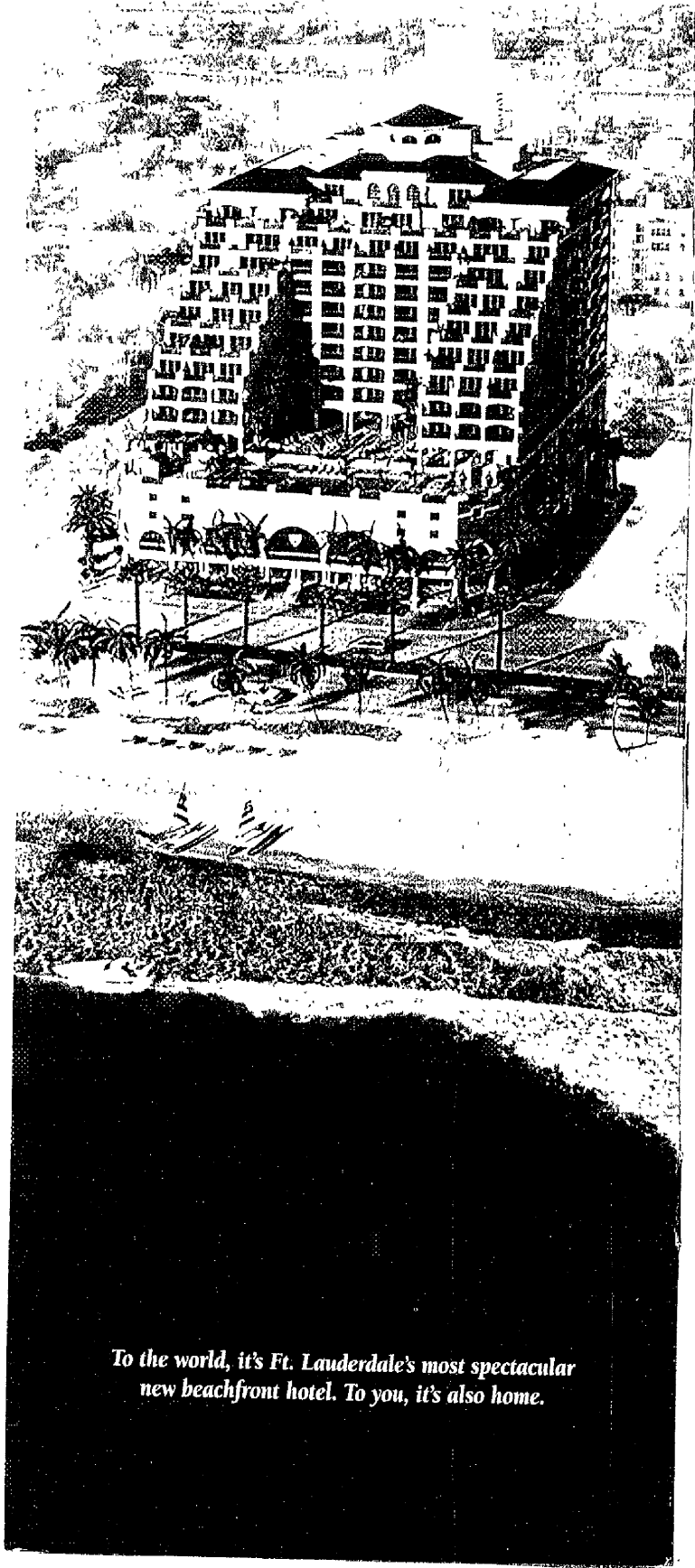
\$26,954.88

Exhibit "6"

THE ATLANTIC

A FIVE-STAR
HOTEL CONDOMINIUM
ON THE OCEAN
IN FT. LAUDERDALE

Exhibit "2"



*To the world, it's Ft. Lauderdale's most spectacular
new beachfront hotel. To you, it's also home.*

Introducing The Atlantic,
an elegant new five-star
hotel condominium on the ocean
in Fort Lauderdale – operated by
Starwood Hotels & Resorts Worldwide, Inc.SM,
one of the most renowned hotel
names in the world.



The Atlantic is an extraordinary new hotel
condominium that brings five-star resort
luxury to Fort Lauderdale's most desirable
and spectacular beachfront address. From the
moment you enter the porte cochere entrance
of this private waterfront oasis, you'll know
you've arrived at one of the world's great
seaside destinations — a resort that offers
world-class hospitality, service and luxury
to residents and guests alike.

Exhibit "7"



*The Daniel Hotel,
Venice, Italy*

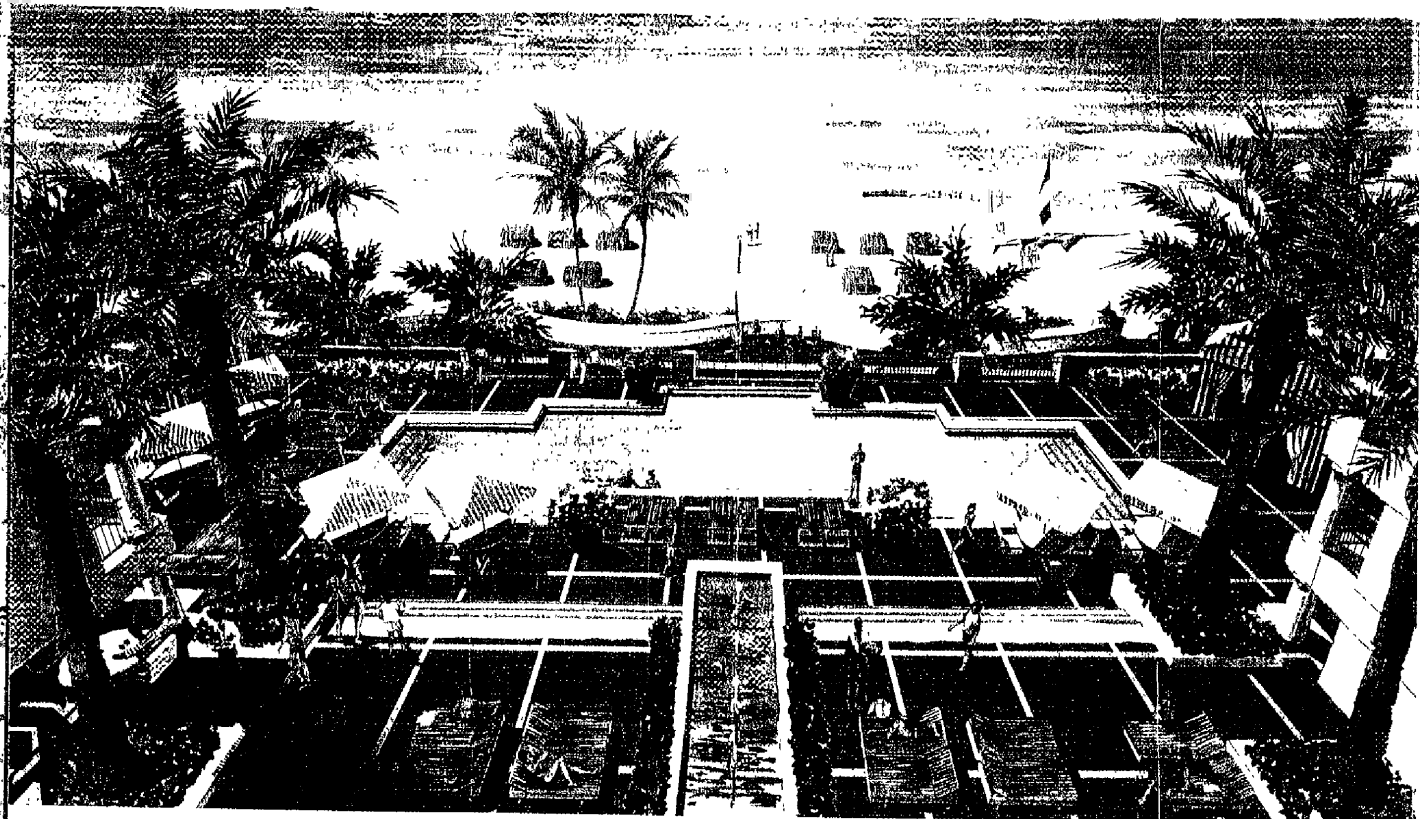


The Orchid at Mauna Iau, Hawaii

A New Star in Starwood's Luxury Collection

The Atlantic is the newest member of The Luxury Collection®, a group of elite international hotels operated by Starwood Hotels & Resorts Worldwide, Inc. These exclusive world-class resorts, including such prestigious destinations as The Daniel and The Gritti Palace in Venice, The Prince de Galles in Paris, The Phoenician in Scottsdale, The Lodge at Koele and The Manele Bay in Hawaii, cater to the world's most demanding and sophisticated travelers, providing a level of personal service and attention that is simply unsurpassed.

Exhibit "7"



Glistening blue waters, rich landscaping, superb service – the tropical pool on the Spa Level will be a very special oasis



Chefs from around the world offer a variety of special dining experiences, including a formal gourmet restaurant overlooking the ocean



Pampering reaches new heights in The Atlantic's world-class European Spa and fitness center



At The Atlantic, you are surrounded by elegance, from beautiful poster beds hand-carved from burl mahogany to rich Bouscat fabrics from France

Exhibit "7"

Building Features and Amenities

- Beautiful porte-cochere entry
- World-class concierge service provided
- 24-hour doorman and valet
- Magnificent lobby and common areas designed by award winning firm Lynn Wilson and Associates
- Heated swimming pool with majestic view of the Atlantic Ocean
- Ocean view poolside cafe and bar
- Private pool cabanas
- Indoor/outdoor gourmet dining
- 24-hour room service
- Elegant private reception areas
- Boardroom and conference facilities
- Housekeeping services available
- 7,000 square feet European spa
- Fitness Center with state-of-the-art equipment
 - Men's and women's lounge, featuring saunas and steam rooms
 - Massage and treatment rooms
 - One on-one personal trainer
 - Aerobic, cardiovascular and strength training
 - Fitness & body composition counseling
 - Yoga relaxation classes
 - Aqua aerobics
 - Power Step aerobics
 - Spa suite with private garden
 - Indoor and outdoor treatments
- The Atlantic spa offers a variety of world-class treatments and services including these among others
 - Aromatherapy massage
 - Swedish massage
 - Deep tissue massage
 - En suite massage
 - Turkish body scrub
 - Revitalization facial
 - Full service salon offering spa manicures and seascape pedicures

RESIDENCE FEATURES

- Fully appointed furnished suites designed by Lynn Wilson & Associates
- Imported marble entry foyers
- All residences have expansive terraces
- Electronic card-key security system
- Hotel telephone system with additional pre-wiring for private line and data port
- Televisions in all living rooms and bedrooms
- Central, gas-fired circulating hot water system
- Central HVAC system with individual controls for each suite
- Hurricane rated, energy efficient exterior window glazing
- Owner's closet with security locks in all suites
- Private storage area available

KITCHEN FEATURES

- European wood cabinetry
- Baltic Green imported granite kitchen countertops
- Designer series kitchen appliances
- Refrigerator with ice maker
- Ceran cooktop
- Microwave
- Under counter lighting

BATH FEATURES

- Designer selected bathroom fixtures
- Clear-glass enclosed shower
- Marble-clad baths – Jerusalem stone
- Baltic Green granite vanity tops

Available on a fee for service basis

file 1501.03
A/Gawood/Tunal

HOTEL MANAGEMENT AGREEMENT

BETWEEN

LUXURY RESORTS INTERNATIONAL, INC.
a Florida corporation

AS OWNER,

AND

SHERATON OPERATING CORPORATION,
A Delaware corporation

AS OPERATOR,

FORT LAUDERDALE

FLORIDA

1501.03

HOTEL MANAGEMENT AGREEMENT

THIS HOTEL MANAGEMENT AGREEMENT (this "Agreement") is made and entered into as of November ____, 2001, by and between SHERATON OPERATING CORPORATION, a Delaware corporation ("Operator"), and LUXURY RESORTS INTERNATIONAL, INC., a Florida corporation ("Owner").

RECITALS

- A. Owner or its Affiliate owns the Site, on which Owner intends to develop and construct a Condominium pursuant to the Florida condominium law (which shall include the Hotel); to sell Residential Units therein to the public; and to offer or cause others to offer in conjunction with the Residential Units a Voluntary Rental Program.
- B. Operator is experienced in managing luxury resort hotels, restaurants, private clubs, and spas. Owner desires to engage Operator to manage the Hotel Units, the Guest Room Units, the Rental Agreements and the Voluntary Rental Program, and to cause to be provided the other services described herein, all in accordance with Operator Standards. Operator has agreed to undertake such services, all on and subject to the terms and conditions contained in this Agreement.
- C. Within ten (10) business days of the date set forth above Owner and Operator shall execute a Technical Assistance Agreement whereby Operator agrees to advise Owner in connection with the planning, decorating, furnishing, and equipping of the Hotel Units and the Guest Room Units, and failing the execution of such an agreement, this Agreement shall be terminable by either party upon written notice to the other.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

Unless the context otherwise specifies or requires, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" of a Person means a Person who, directly or indirectly through one or more intermediaries, owns or controls, is owned or controlled by or is under common control or ownership with the Person in question. For purposes of this definition, "own" or "ownership" means ownership by one Person of 50% or more of the voting stock of the controlled Person, in the case of a corporation or, in the case of Persons other than corporations, entitlement of the controlling Person, directly or indirectly, to receive 50% or more of the dividends, profits or similar economic benefit from the controlled Person; and "control" means the possession, directly, or indirectly, of the power to direct or cause the direction of the management and policies of the controlled Person.

"Authorized Signatories" means Hotel Employees designated by Operator and approved in writing by Owner (which approval shall not be unreasonably withheld or delayed), which persons shall be the sole signatories authorized from time to time to sign checks drawn on bank accounts referred to in this Agreement, and who are bonded or otherwise insured for the benefit of Owner, to the reasonable satisfaction of Owner.

"Automation Services" means the various data processing, telecommunications, office automation and computer services for the Hotel as more particularly described in the Technical Assistance Agreement.

"Automation Standards" has the meaning given that term in Section 3.1(e) of the Technical Assistance Agreement.

"Bank Accounts" has the meaning given that term in Section 3.6 hereof.

"Base Fee" has the meaning given that term in Section 4.1 hereof.

"Brand Names" means "The Luxury Collection".

"Capital Budget" has the meaning given that term in Section 6.1 hereof.

"Capital Expenditure" means any item of expense that, according to GAAP, is not properly deducted as a current expense on the books of the Hotel, but rather should be capitalized.

"Capital Improvements" means any item of any nature incorporated into the Hotel, the cost of which is a Capital Expenditure.

"Certified Financial Statements" means financial statements with respect to the operations of the Hotel which contain the information and the certificate described in Section 9.3.

"Centralized Services" means those services described in Exhibit C hereto and in Section 4.4 hereof.

"Centralized Services Charges" has the meaning given that term in Section 4.4(c) hereof.

"Centralized Marketing Program" has the meaning given that term in Section 4.4(a) hereof.

"Condominium" shall mean all of the improvements to be constructed by Owner on the Site, which shall include (without limitation) the Hotel Units and all Residential Units, and the condominium regime therefor described in and created pursuant to the Declaration.

"Condominium Association" means that certain condominium association of owners of the Residential Units and Hotel Units to be created pursuant to the Articles of Incorporation for the Atlantic Hotel Condominium Association, Inc. attached as an exhibit to the Declaration.

"Condominium Management Services" means the administration, management and maintenance of the common elements of the Condominium and of the Condominium Association property (if any) and the performance of other services with respect to the Condominium as may be required by Florida Statutes Chapter 718 or the Declaration.

"Condominium Units" shall mean and refer to the minimum of 123 residential condominium units (sometimes referred to as "Residential Unit(s)"), and the Hotel Units to be constructed by Owner as part of the Condominium.

"Confidential Information" means information that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (and includes information developed internally or received from a third party subject to a continuing obligation to maintain its confidentiality), but excludes information that (i) is disclosed to third parties by Operator or its Affiliates without restriction; (ii) is or becomes publicly available by other than unauthorized disclosure; or (iii) can be shown by documentation to have been independently developed by or on behalf of Owner, or on behalf of a party other than Operator or its Affiliates, or any Managed Hotel (excluding the Hotel).

"Corporate Personnel" means any personnel from the corporate offices of Operator or its Affiliates who perform activities at or on behalf of the Hotel in connection with the services provided by Operator under this Agreement.

"Damages" has the meaning given that term in Article 15 hereof.

"Declaration" means that certain Declaration of Condominium (and all exhibits thereto) setting forth the rights and obligations of the Residential Units, the Hotel Units and the owners and occupants thereof, the form of which is attached as **Exhibit B** hereto, which shall, prior to the recordation thereof in the Public Records of Broward County, Florida, be subject to Operator's reasonable review and to reasonable modification based on the impact of the proposed modifications on the operation of the Hotel or the dollar amount of the fees to be earned by Operator pursuant to the terms of this Agreement, and as otherwise modified by Owner in accordance with the terms set forth in Section 25.13(b).

"Designated Accountant" means any of the "Big Five" accounting firms as selected by Owner and reasonably approved by Operator, if such firm is not available, another national firm of independent certified public accountants mutually acceptable to Owner and Operator.

"Employment Costs" means any claims, liabilities, or obligations accruing during and after the term of this Agreement with respect to the Hotel Employees relating to salaries, wages, minimum wages, compensation, overtime pay, holiday pay, vacation pay, raises, recruitment expenses, bonuses, employee benefits, training expenses, severance pay, employment taxes, grievances under union contracts, the costs of moving executive or management level Hotel Employees, their families and their belongings to the area in which the Hotel is located at the commencement of their employment at the Hotel, unfair labor practice charges, workers' compensation, FICA, ERISA, the Worker Adjustment and Retraining Notification Act, the Americans With Disabilities Act, disability, unemployment insurance, breach of employment contracts, whether sounding in contract or tort, wrongful discharge, safety and health, and employment discrimination, including claims before the Equal Employment Opportunity Commission, Office of Federal Contract Compliance Program, the Department of Labor, and all court costs and legal fees incurred in defending such claims.

"Encumbrance" has the meaning given that term in Section 13.1 hereof.

"Expert" means an independent nationally recognized hospitality consulting Person appointed in each instance by agreement of the parties hereto or, failing agreement, each party shall select one (1) nationally recognized hospitality consulting Person, and the two (2) respective consulting Persons so selected shall select a nationally recognized hospitality consulting Person to be the Expert.

"FF&E" means with respect to the Hotel, furniture, equipment, fixtures and furnishings, the cost of which is a Capital Expenditure.

"Fiscal Year" means a fiscal year that ends on December 31. The first Fiscal Year shall be the period commencing on the Opening Date and ending on December 31 of the same calendar year. The words "full Fiscal Year" mean any Fiscal Year containing not fewer than 365 days. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Term shall constitute a separate Fiscal Year.

"Force Majeure Event" means any act occasioned by a cause beyond the reasonable control of Owner or Operator, as applicable, including, but not limited to, casualties, war, insurrection, strikes, lockouts, civil unrest, and governmental actions, revolution, insurgency, terrorism, sabotage, hurricanes, earthquakes or other natural catastrophe, disruption to local, national or international transport or communication services, and any other causes that threaten public safety generally or that create a substantial disruption to commercial activities in, or the volume of resort travel to, Fort Lauderdale, Florida.

"Fund" has the meaning given that term in Section 3.6(c) hereof.

"Funds Request" has the meaning given that term in Section 3.7 hereof.

"GOP" or "Gross Operating Profit" means Gross Revenues minus Operating Expenses. Notwithstanding the foregoing, the following shall not be deducted from Gross Revenues as Operating Expenses for purposes of determining GOP: (a) the Incentive Fee, (b) all property taxes, including ad valorem taxes

assessed on real and personal property and all taxes based on a party's income, (c) all insurance premiums, (d) rentals of real and personal property (except, with respect to personal property rentals directly in connection with revenue generating activities) to the extent they are classified as capital leases under GAAP, (e) depreciation and amortization on capitalized assets, (f) costs and expenses of Owner or Owner's personnel, such as entertainment expenses, salaries, wages and employee benefits of Owner's employees, directors' fees, and the expenses of directors or employees to attend board meetings, (g) costs and professional fees, including the fees of attorneys, accountants and appraisers, to the extent such fees are not classified as an operating expense under the Uniform System, and (h) Capital Expenditures and payments into the Fund.

"Gross Revenues" during any period means all revenue and income of any kind derived directly or indirectly from operations of the Hotel properly attributable to the period under consideration (including rentals or other payments from licensees, lessees, or concessionaires of retail space in the Hotel, but not gross receipts of such licensees, lessees, or concessionaires), all revenues from the rental of Guest Room Units under the Voluntary Rental Program (without deduction of any amounts payable to the owners of such Guest Room Units or to the Owner under the Rental Agreements), all as determined in accordance with GAAP and the Uniform System. The parties acknowledge that funds received from Guest Room Unit owners during Owner Occupancy Periods pursuant to the Rental Agreements shall not be considered as revenue or income for the purpose of this definition.

There shall be excluded in determining Gross Revenues for any period any: (a) applicable excise, sales occupancy and use taxes, or similar government taxes, duties, levies, or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services or displays, such as gross receipts, admission, cabaret, or similar or equivalent taxes (but only to the extent such taxes and service charges are actually remitted to the government authorities or employees, respectively); (b) receipts from financing, sale or other disposition of capital assets and other items not in the ordinary course of the Hotel's operations and income derived from securities and other property acquired and held for investment, or from Hotel operating investment or depository accounts; (c) receipts from awards or sales in connection with any taking, from other transfers in lieu of and under the threat of any taking, and other receipts in connection with any taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Hotel; (d) proceeds of any insurance, including the proceeds of any business interruption insurance; (e) rebates, discounts or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Gross Revenue, but shall constitute an Operating Expense in determining Gross Operating Profit); (f) proceeds from the sale of Condominium Units; and (g) assessments collected from owners of Condominium Units as Shared Costs pursuant to Article 12 of the Declaration and Section 25.13(c) hereof.

"Guest Room Units" means those Residential Units which are at any one time in the Voluntary Rental Program pursuant to executed Rental Agreements.

"Hotel" means the Hotel Units and Guest Room Units to be constructed and developed on the Site, together with the Rental Agreements.

"Hotel Employees" means all individuals performing services in the name of the Hotel at the Hotel (or in anticipation thereof, pursuant to the Technical Assistance Agreement), whether such individuals are employed by Operator or an Affiliate of Operator, or a contractor providing labor to the Hotel.

"Hotel Name" means "The Atlantic".

"Hotel Units" means one or more commercial Condominium Units owned by the Owner and comprised of a restaurant, a cocktail bar, a pool, a bar and grill, a spa, stairways, parking areas, entrance areas, lobby, landscaping, front desk, back of the house, hallways, elevator shafts, and all other areas of the Condominium except for the Residential Units (and any limited common elements associated therewith) and any common elements of the Condominium as described in the Declaration.

"Incentive Fee" has the meaning given that term in Section 4.2 hereof.

"Index" means the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Hotel, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency, as mutually acceptable to Owner and Operator.

"Initial Working Capital" has the meaning given that term in Section 3.7 hereof.

"Lender" means any lender or financial institution (other than Owner or any Affiliate of Owner) to which Owner may, from time to time, collaterally assign and hypothecate its rights hereunder, or to which Owner may mortgage or otherwise encumber all or any portion of the assets that comprise the Hotel Units.

"Loan Documents" means any mortgage or other document or documents that govern the rights, security interests, liens, and rights of any Lender.

"Managed Hotel" means any hotel, resort, spa or club that is managed by Operator or its Affiliate as part of Operator's "Luxury Collection".

"Minimum Initial Working Capital" means \$200,000 or such other amount set forth in the approved Pre-Opening Budget.

"Net Operating Profit" or "NOP" for any period means GOP less (a) the Base Fee, (b) Owner's Priority Return, and (c) fixed charges, including property taxes, property insurance premiums, and amounts deposited into the Fund, but before deduction of the Incentive Fee.

"Opening Date" has the meaning given that term in the Technical Assistance Agreement.

"Operating Account(s)" has the meaning given that term in Section 3.6(a) hereof.

"Operating Expenses" means any and all ordinary and necessary expenses incurred by Operator or Owner in connection with the operation of the Hotel under the terms of this Agreement and the Rental Agreements, or in connection with the provision of the Automation Services to the Hotel after the Opening Date or the maintenance of the Automation Standards at the Hotel after the Opening Date under the terms of the Technical Assistance Agreement, including (without limitation): (a) Reimbursable Expenses payable to Operator, (b) the Employment Costs, (c) Centralized Services Charges, (d) the Base Fee and the Incentive Fee, (e) maintenance and utility costs, (f) advertising and business promotion costs, and (g) all costs and expenses of Operator or otherwise incurred by Operator in connection with Operator's performance or enforcement of Owner's rights, duties, remedies, services and functions under the Rental Agreements pursuant to Section 5.2 (but not the portion of the Guest Room Units rental revenues collected by Operator which is payable to the owners of the Guest Room Units pursuant to the Rental Agreements), and/or as the "Hotel Unit Owner" under the Declaration pursuant to Section 25.13(c) (including, without limitation, costs and expenses related to inspections, reporting, accounting, bookkeeping, collection and payment services, and collection and foreclosure remedies).

"Operating Plan" means the annual marketing and operating plan and budget for the Hotel prepared in accordance with the terms of Section 6.1 hereof.

"Operator Indemnified Parties" has the meaning given that term in Article 15 hereof.

"Operator Standards" means (a) a level of service and quality generally considered to be "luxury class" and comparable to the level of service and quality prevailing from time to time at other Managed Hotels, (b) in a manner consistent with the requirements and limitations set forth in this Agreement and the Technical Assistance Agreement (including those relating to the Operating Plan), (c) in accordance with standards, policies and programs in effect from time to time that are applicable to the operation of Managed Hotels, including standards and policies applicable to all phases of operation and programs including purchasing programs, sales promotion programs and quality improvement programs and (d) to the extent consistent with

the standards described in clauses (a) through (c) above, in a manner reasonably expected to (i) protect and preserve the assets that comprise the Hotel; and (ii) optimize over the Term the financial performance of the Hotel's operation.

"Owner Indemnified Parties" has the meaning given that term in Article 16 hereof.

"Owner's Invested Capital" means the sum of (i) all actual amounts invested by Owner in the acquisition, financing, design, construction and development of the Hotel and the Site, including the cost of initial FF&E, and all pre-opening costs and expenses incurred prior to the Opening Date (including fees paid to Operator pursuant to the Technical Assistance Agreement), and (ii) the cost of any subsequent Capital Improvements to the Hotel Units that are not paid from the Fund and that are not replacement items. Any additional capital invested by Owner in a Fiscal Year as described in clause (ii) above shall be deemed invested on the same day that such capital is actually invested.

"Owner's Names" means the name, phrase or logo as reflected on Exhibit F attached hereto for which Owner has registered a valid trademark or service mark and containing the words "Atlantic".

"Owner Occupancy Period(s)" means those periods of time when owners of a Guest Room Units (or such owners' guests) reserve for use their Guest Room Units as permitted and in accordance with the Rental Agreements.

"Owner's Priority Return" means, with respect to each full Fiscal Year (and to the extent of available funds as described below), an amount not to exceed 12% of the Owner's Invested Capital (and for any partial Fiscal Year [and to the extent of available funds as described below], the pro rata portion thereof based on the number of days in such Fiscal Year falling within the Term) which amount shall be payable to the Owner to the extent of available funds from the Hotel operations after payment of all Operating Expenses (and other expenditures payable under this Agreement), but prior to payment of the Incentive Fee to the Operator; provided that to the extent of insufficient funds as described herein in any partial or full Fiscal Year (as applicable) such insufficiency shall not accrue.

"Owner's Representative" means the natural person or persons designated in writing from time to time by Owner, which person or persons shall be the liaison between Operator and Owner. Operator may conclusively rely on any written instructions or approvals given to it by Owner's Representative as being the instructions or approvals of Owner.

"Ownership Transfer" has the meaning given in Section 22.2 hereof.

"Payroll Account" has the meaning given that term in Section 3.6(b) hereof.

"Person" means any natural person, or any partnership, joint venture, limited liability company, limited partnership, corporation, association, trust or trustee, or any other legal entity.

"Performance Failure" has the meaning given in Section 5.1 hereof.

"Pre-Opening Budget" has the meaning given that term in the Technical Assistance Agreement.

"Prime Rate" means a variable rate of interest equal from day to day to the "Prime Rate" as published in the *Wall Street Journal* (or if such publication is no longer published or such rate is not published therein, a similar reputable financial publication selected by Operator in its reasonable discretion listing such annual rate of interest).

"Prohibited Person" means any Person who (i) engages, through itself or through an Affiliate, in the operation or management of hotels competitive with those of Operator (as determined by an Expert who shall submit a determination within 30 days of selection of such Expert and the costs of engaging such Expert shall be paid by Owner); (ii) is a governmental organization or entity, other than a pension fund; or

(iii) would impair the ability of Operator or its Affiliates to obtain or retain liquor licenses for any hotel, restaurant, bar, or lounge (including the Hotel) now or hereafter owned or operated by Operator or its Affiliates (provided that if such legal impairment would affect only the Hotel, Operator shall cooperate with Owner to take such action as may be reasonably necessary and appropriate, at no cost to Operator, to remove such impairment).

"Proprietary Materials" means all copyrights and all Confidential Information owned by Operator, its Affiliates, or by any Managed Hotel (other than the Hotel), and includes, without limitation (i) any operational manuals (including, but not limited to, those relating to training, security, policies, procedures, accounting, reservations, and marketing); (ii) corporate sales records and guest histories (other than a copy of the guest histories of the Hotel, which may be retained in tangible or digital form and used by Owner); (iii) employee surveys; (iv) food and drink recipes; (v) financial information relating to Operator or its Affiliates; and (vi) software owned by (or licensed to) Operator, including any derivative works therefrom.

"Qualified Transferee" means any transferee who (i) has a verifiable net worth, determined in accordance with generally accepted accounting principles, of at least 25% of the then replacement value of the Hotel Units; (ii) is of good reputation; (iii) enters into an assumption agreement reasonably satisfactory to Operator, pursuant to which such transferee assumes all of Owner's obligations hereunder; and (iv) is not a Prohibited Person. A Qualified Transferee that is an Affiliate of Owner must also meet the foregoing qualifications.

"Reimbursable Expenses" has the meaning given that term in Section 3.4(b) hereof.

"Released Party" has the meaning given that term in Article 17 hereof.

"Releasing Party" has the meaning given that term in Article 17 hereof.

"Rental Agreement" has the meaning given that term in Section 5.2 hereof.

"Residential Unit" has the meaning given that term in the definition of the term Condominium Units herein.

"Restricted Area" has the meaning given that term in Section 5.4 hereof.

"Sale Termination Fee" means an amount equal to the following which shall be due and payable by Owner to Operator in the event of an Ownership Transfer and termination of this Agreement pursuant to Section 22.4: (a) if the foregoing Ownership Transfer and termination shall occur at any time during the seventh (7th) year from the Opening Date, the Sale Termination Fee will be the Marketing Fee for the full Fiscal Year in which the foregoing Ownership Transfer is consummated (the "**Termination Marketing Fee**") plus an amount equal to the product of two (2) multiplied by the sum of the annual Base Fee and the annual Incentive Fee earned during the twelve (12) month period immediately preceding such termination; (b) if the foregoing Ownership Transfer and termination shall occur at any time during the eight (8th) year from the Opening Date, the Sale Termination Fee will be the Termination Marketing Fee plus an amount equal to the product of 1.5 multiplied by the sum of the annual Base Fee and the annual Incentive Fee earned during the twelve (12) month period immediately preceding such termination; (c) if the foregoing Ownership Transfer and termination shall occur at any time during the ninth (9th) year from the Opening Date through the end of the initial 10-year Term hereof, the Sale Termination Fee will be the Termination Marketing Fee plus one of the following amounts: (i) if one full year or more shall remain in the initial 10-year Term as of the date that the Ownership Transfer is consummated, the sum of the annual Base Fee and the annual Incentive Fee earned during the twelve (12) month period immediately preceding such termination, or (ii) if less than one full year shall remain in the initial 10-year Term as of the date that the Ownership Transfer is consummated, the remainder of the annual Base Fee and the annual Incentive Fee otherwise due under this Agreement.

"Senior Executive Personnel" means the individuals employed from time to time as the general manager, the director of marketing and sales, director of food and beverage, director of spa operations, and the controller of the Hotel (or serving such functions, regardless of the specific titles given to such individuals).

"Shared Costs" shall have the definition ascribed thereto in Section 12.1 of the Declaration. Operator shall cause the Shared Costs to be billed, assessed and collected as provided in Section 25.13(c) hereof and shall use such collected amounts to offset the expenses related to the Hotel Units' Shared Components (as such term is described in Section 2.29 of the Declaration).

"Site" means that certain real property located in Fort Lauderdale, Florida, and more particularly described on Exhibit A hereto.

"Technical Assistance Agreement" means that certain Technical Assistance and Pre-Opening Services Agreement entered into by and between Operator and Owner of even date herewith relating to the Hotel.

"Term" has the meaning given in Section 2.1 hereof.

"Transaction Documents" has the meaning given in Section 10.1 hereof.

"Uncontrollable Expenses" has the meaning given that term in Section 6.3(b) hereof.

"Uniform System" means the latest edition (currently the Ninth Revised Edition) of the *Uniform System of Accounts for the Lodging Industry* as adopted by the American Hotel and Lodging Association, from time to time.

"Voluntary Rental Program" shall mean and refer to the operation and management of the Guest Room Units in accordance with the Rental Agreements therefor and this Agreement.

2. Engagement of Operator.

2.1 Appointment and Term. For a term (the "Term") beginning effective as of the Opening Date and continuing for a period of 10 years (as such Term may be extended as provided in this section, or earlier terminated as otherwise provided in this Agreement), Owner hereby appoints and employs Operator as the exclusive manager of the Hotel upon the terms and conditions hereinafter set forth. Operator hereby accepts the appointment on such terms and conditions. Owner shall have the option, in its sole discretion, to extend the Term hereof for up to two additional 5 year periods (each, an "Extension") by delivery of written notice to Operator of Owner's election to extend not more than one year and not less than 120 days prior to the expiration of the initial Term (or Extension, if applicable) (the "Extension Notice"). Any such Extension shall be automatically effective upon Operator's receipt of an Extension Notice within the time period set forth herein without any amendment hereto, but Owner and Operator shall execute and deliver any supplements to this Agreement that either may reasonably request to evidence any such Extension.

2.2 Agency and Waivers. The relationship between the parties hereto shall be that of principal, in the case of Owner, and agent, in the case of Operator. To the extent there is any inconsistency between the common law fiduciary duties and responsibilities of principals and agents, and the provisions of this Agreement, the provisions of this Agreement shall prevail. **IT IS THE INTENTION OF THE PARTIES THAT THIS AGREEMENT BE DEEMED A WAIVER BY OWNER OF ANY FIDUCIARY DUTIES OWED BY AN AGENT TO ITS PRINCIPAL, AND A WAIVER BY OPERATOR OF ANY OBLIGATIONS OF A PRINCIPAL TO ITS AGENT.** To the extent the foregoing are inconsistent with, or would have the effect of modifying, limiting or restricting, the express provisions of this Agreement, the intention of the parties is that this Agreement be interpreted in accordance with general principles of contract interpretation without regard to the common law of agency (except as expressly incorporated in the provisions of this Agreement), and that liability between the parties shall be based solely on principles of contract law and the express provisions of this Agreement. In no event shall Operator be deemed in breach of its duties hereunder, or otherwise at law or in equity, solely by reason of (i) the failure of the financial performance of the Hotel to meet Owner expectations or income projections or other matters included in

the Operating Plan, (ii) the acts of Hotel Employee, (iii) the institution of litigation or the entry of judgments against Owner or the Hotel with respect to Hotel operations, or (iv) any other acts or omissions not otherwise constituting a breach of this Agreement, it being the intention and agreement of the parties that Operator's sole obligation hereunder shall be to act in conformity with the standard of skill, care and diligence referred to in Section 3.1 and 3.2, in conformity with the Operator Standards, and otherwise in conformity with the express terms of this Agreement. Furthermore, as between Owner and Operator, Operator shall have **NO LIABILITY FOR PUNITIVE DAMAGES OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES** to Owner in respect of a breach of fiduciary duties.

3. Operation of Hotel.

3.1 Standard of Operation. Operator shall cause the Hotel to be operated in accordance with Operator Standards. From time to time, Operator shall communicate to Owner any material variances from Operator Standards of which it is aware. Notwithstanding anything in this Section 3.1, it is recognized that Operator may not be able, despite its reasonable efforts, to cause the Hotel to be operated in conformity with Operator Standards (i) to the extent it may be prevented from compliance by any Force Majeure Event, or (ii) to the extent attributable to any breach by Owner of Owner's obligations under Section 3.7 or 3.8.

3.2 Duties and Powers. Subject to Article 6, Operator is hereby authorized and granted full power and authority by Owner, to take such actions during the Term, in the name and on behalf of Owner, as are necessary or desirable to cause the Hotel to be operated as an luxury resort hotel in accordance with the standards set forth herein, including without limitation to:

- (a) use reasonable efforts to maximize patronage of Hotel facilities;
- (b) use reasonable efforts to cause the collection of all charges, rents, and other amounts due from Hotel guests, patrons, tenants, parties providing services, and concessionaires;
- (c) establish the policy of the Hotel regarding association with any credit card system, which policy shall be subject to Owner's prior approval so long as such approval is not unreasonably withheld, conditioned or delayed;
- (d) review the quality of items purchased by the Hotel within the scope of approved Operating Plan (including operating supplies) or Capital Budgets that have been approved by Owner in accordance with the terms hereof;
- (e) consistent with the approved Operating Plan, establish all prices, room rates, and other charges;
- (f) as may be necessary or desirable from time to time, develop and cause to be implemented revised food and beverage concepts and entertainment policies along with related policies and procedures;
- (g) cause the Hotel to join such industry associations and organizations as Operator considers appropriate;
- (h) create a marketing plan for the Hotel and, in a manner consistent with the other hotels owned or operated by Operator, promote and publicize the Hotel as a Managed Hotel;
- (i) oversee the maintenance and repair of the Hotel, use commercially reasonable efforts to keep the Hotel and the FF&E in good operating order, repair and condition, consistent with the Operator Standard, including making necessary replacements, improvements, additions and substitutions thereto, and coordinate the design, construction and installation of any renovations, improvements, repairs, or replacements of FF&E, building systems, or other physical components of the Hotel that may be undertaken;

(j) negotiate and grant on behalf of Owner concessions for services customarily subject to concession in hotels, provided that concession agreements shall first be approved by Owner, such approval not to be unreasonably withheld, conditioned or delayed;

(k) hire, as an Operating Expense, third party professionals or specialists (other than auditors, who shall be selected by Owner) to advise Owner and Operator with respect to the operation, maintenance, and improvement of the Hotel (including without limitation, the selection of attorneys for the handling of routine legal matters related to day to day operations, such as slip and fall tort litigation instituted against Operator or Owner in connection with the operations of the Hotel, but not the selection of attorneys for the handling of non-routine legal matters which shall remain in the sole discretion of Owner);

(l) use good faith effort to cause the Hotel's compliance with all laws and regulations applicable to the Hotel (including, without limitation, all health, pension fund, and other labor and employment laws and regulations); provided that this subsection shall not diminish in any respect either Operator's rights or Owner's obligations under Article 15, and provided further that Operator shall not be required to comply with any of the foregoing to the extent that compliance requires any capital or other expenditures that Owner refuses to make;

(m) advise and consult with Owner about legal actions or proceedings to be initiated by the Hotel that Operator or Owner determines are necessary or desirable; provided that Operator shall not commence any such legal action or proceeding without first obtaining the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed;

(n) oversee the defense of legal actions or proceedings brought against the Hotel Units and arising from the operation of the Hotel by counsel designated by Owner and approved by Operator (which approval shall not be unreasonably withheld, conditioned or delayed);

(o) determine and implement all personnel policies and practices relating to the Hotel, including: (i) policies and practices relating to terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans and other employee benefits, discipline, dismissal, transfer and replacement; and (ii) policies and practices relating to the exercise by any Hotel Employee of rights under the National Labor Relations Act or any applicable labor laws in relation to the Hotel (including union organization, recognition and withdrawal of recognition, union elections, contract negotiation on a single-employer or multi-employer basis, grievances, unfair labor practice charges, strikes and lockouts);

(p) subject to Owner's rights pursuant to Section 3.3(a), recruit, hire, relocate, pay, supervise, transfer and dismiss all Hotel Employees;

(q) supervise and maintain complete books of account and records for the Hotel consistent with the Uniform System and GAAP;

(r) negotiate, enter into and administer, in the name and on behalf of Owner, service contracts and licenses for Hotel operations, including contracts and licenses for health and safety systems, maintenance, electricity, gas, telecommunications (including internet service), cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, master television service, use of copyrighted materials (including music and videos), entertainment and other services Operator deems advisable;

(s) enter into and administer, in the name and on behalf of Owner, contracts for the use of banquet and meeting facilities;

(t) prepare and submit to Owner the Operating Plan for each Fiscal Year;

(u) reasonably cooperate with Owner and any prospective purchaser, lessee, Lender, or other lender in connection with any proposed sale, lease, or financing of or relating to the Hotel; provided,

however, that Operator shall not be required to release to any Person any information that is confidential or proprietary to Operator or its Affiliates; and provided further that Owner shall reimburse Operator for any actual third party out-of-pocket expenses incurred by Operator in connection with such cooperation when such expense is not otherwise paid or reimbursed under this Agreement;

(v) use reasonable and customary efforts to collect on behalf of Owner and account for and remit to governmental authorities all applicable excise, sales, occupancy and use taxes or similar governmental charges collectible by the Hotel directly from patrons or guests, or as part of the sales price of any goods, services, or displays, including gross receipts, admission, or similar or equivalent taxes duties, levies or charges;

(w) establish all advertising, public relations and promotion policies consistent with the Operating Plan, and establish policies with respect to discounted and complimentary room, food and beverage, and other hotel services that shall be consistent with Operator's policies generally applicable at similarly situated Managed Hotels;

(x) perform such other tasks or engage such third parties as are customary and usual in the operation of a hotel of the class and standing of the Hotel; and

(y) cause to be provided as necessary, but at all time within guidelines of the approved Operating Plan, complimentary rooms to assist with the promotion and marketing of the Hotel.

Notwithstanding anything to the contrary in this Section 3.2, without the prior written approval of Owner (which approval shall not be unreasonably withheld, conditioned or delayed), unless an item is approved in the Operating Plan pursuant to Article 6, Operator shall not, on behalf of Owner, enter into any contract or commitment (or a series of contracts or commitments) for the purchase of any goods or services if the total expenditure for such contract or commitment would exceed \$25,000 or would have a term exceeding one year and may not be canceled on at least 90 days notice.

Operator hereby accepts such appointment and undertakes to use its best efforts to perform or cause to be performed all of the functions described in this Agreement, subject to the terms and provisions hereof and in compliance with applicable law.

3.3 Hotel Employee. During the Term, Operator shall manage all aspects of the Hotel's human resources functions and shall implement at the Hotel the personnel policies and procedures applicable to Managed Hotels. In connection with the management of the Hotel's human resources functions, Operator and Owner shall have the responsibilities and exercise the rights set forth below:

(a) Operator shall identify, appoint, assign, instruct and supervise the Hotel's Senior Executive Personnel and department heads, and they, or other Hotel Employees to whom they may delegate such authority, shall identify, appoint, assign, instruct and supervise all personnel necessary or advisable for the operation of the Hotel. Such authority shall also include the right to transfer, terminate and/or replace any Hotel Employee. Owner shall have the right to approve the individuals selected by Operator as Senior Executive Personnel prior to his or her appointment, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to appointing any Senior Executive Personnel, Operator shall provide Owner with a written summary of each individual's professional experience and qualifications. Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers notice of its disapproval of such appointment within seven (7) days after Operator's delivery to Owner of a written summary of such individual's professional experience and qualifications. Owner acknowledges that it may not reject more than three (3) candidates proposed by Operator for any one position as Senior Executive Personnel. Notwithstanding the foregoing, in the event that the general manager of the Hotel is transferred to another hotel operated or owned by Operator within 24 months from the date that such general manager was employed at the Hotel and such transfer is initiated by Operator or its Affiliates, then Operator shall reimburse Owner for all costs incurred by Owner in connection with the engagement of such transferred general manager at the Hotel.

(b) The terms of employment, including hiring, training, compensation, bonuses, employee benefits, discharge, transfer and replacement of all Hotel Employee shall be established and administered by Operator.

(c) Corporate Personnel who travel to the Hotel to perform technical assistance or other services shall be permitted, without charge, to stay at the Hotel and use its facilities (including food and beverage consumption). Corporate Personnel shall be permitted to stay at the Hotel for business or non-business purposes at reduced rates in accordance with policies with respect to such stays in effect from time to time which are applicable to the Managed Hotels.

(d) All Hotel Employees shall be employees of Operator or an Affiliate of Operator, or of a contractor providing labor to the Hotel. All Employment Costs shall be Operating Expenses.

(e) Owner acknowledges that Operator or its Affiliate may have an obligation under federal, state, or local law to give advance notice to Hotel Employee of any termination of their employment, and that failure to comply with any such notification obligation could give rise to civil liabilities. Therefore, notwithstanding anything to the contrary contained in this Agreement, Owner shall indemnify, hold harmless and defend Operator and its Affiliates from and against any such liabilities based on Owner's actions (including terminating this Agreement) which give rise to such a notification obligation on the part of Operator or any of its Affiliates, unless Operator (or its Affiliate) is given adequate opportunity to comply with such obligation.

(f) Owner, on behalf of itself, and its Affiliates and its and their successors, hereby agrees not to solicit the employment of any of the Senior Executive Personnel at any time during the Term or within twelve (12) months following the expiration or termination of this Agreement without Operator's prior approval.

3.4 Corporate Personnel; Reimbursement of Costs and Expenses.

(a) Compensation of Corporate Personnel. Operator shall employ and pay, for its own account, the wages or other compensation of Corporate Personnel who are engaged in the performance of duties under this Agreement. If Operator uses Corporate Personnel on a temporary basis at the Hotel to perform duties normally carried out by full-time, on-site Hotel Employees, then Operator shall be reimbursed by Owner for the per diem salary and benefit costs of such Corporate Personnel until a full-time replacement can be found. When Corporate Personnel is engaged in duties required under this Agreement, such employees shall be furnished and provided with rooms, reasonable food and beverages, laundry, and reasonable telephone services, and gratuities as an Operating Expense whenever such employees are on the Site in connection with Operator's performance of its duties hereunder. All amounts paid pursuant to this Section 3.4 shall be deemed Operating Expenses and all services provided to Corporate Personnel pursuant to this Section 3.4 shall not be included in Gross Revenues.

(b) Reimbursement of Costs and Expenses. Operator shall be entitled to pay or reimburse itself from the Bank Accounts for the following expenses (collectively, "Reimbursable Expenses"):

- (i) all Hotel Employee Costs;
- (ii) the per diem charge, as established from time to time, for personnel of Operator or its Affiliates assigned to special projects for the Hotel;
- (iii) all reasonable and necessary costs and expenses incurred by Operator in the performance of the services contemplated by this Agreement, including all out-of-pocket expenses incurred by Operator directly in connection with its management of the Hotel in the manner permitted or required hereby and in connection with Operator's performance of the Automation Services after the Opening Date in accordance with this Agreement and the Technical Assistance Agreement. Upon receipt of a request from Owner, Operator shall provide Owner with an explanation of the basis for the allocation of a particular cost or expense as an Operating Expense when such cost or expense was incurred for the benefit of the Hotel and one or more

of the other Managed Hotels; provided that Owner's request for such explanations shall be limited in number and reasonable in scope so as not to cause an undue burden on Operator;

- (iv) payments made or incurred by Operator or its Affiliates, or its or their employees to third parties for goods and services in the ordinary course of business in the operation of the Hotel, in accordance with the approved Operating Plan or as otherwise approved by Owner or permitted under this Agreement; and
- (v) all taxes and similar assessments levied against any reimbursements payable to Operator under this Agreement for expenses incurred for Owner's account, including the Reimbursable Expenses described in this Section.

Any Reimbursable Expenses in excess of amounts available in the Bank Accounts shall be paid by Owner within thirty (30) days of the delivery of an invoice therefor by Operator to Owner.

3.5 Labor Agreements. As soon as is reasonably practicable, prior to entering into negotiations with any labor organizations representing or desiring to represent Hotel Employees, Operator shall notify Owner of such negotiations and Owner shall have the right to participate in such negotiations. Without Owner's prior written approval, which approval may be withheld, the Hotel shall not enter into any contract with any such labor organization.

3.6 Bank Accounts. Owner expressly authorizes Operator to establish the following bank accounts (the "**Bank Accounts**") on Owner's behalf at a bank or banks selected by Operator and approved by Owner (such approval not to be unreasonably withheld):

- (a) an account or accounts, bearing the name of the Hotel, for the purposes of depositing all funds received in the operation of the Hotel and paying all Operating Expenses and all other charges and amounts due to Operator under this Agreement (collectively, the "**Operating Account(s)**");
- (b) an account or accounts, in the name of Operator (or any Affiliate of Operator designated as the employer of Hotel Employee), into which amounts sufficient to cover salaries, wages and other employment related costs of Hotel Employee shall be deposited from time to time by Operator (by transfer of funds from the Operating Account(s)) or Owner (if sufficient funds are not available in the Operating Account(s)) (the "**Payroll Account(s)**");
- (c) the separate interest-bearing account provided for in Section 3.8 hereof (the "**Fund**");
- (d) such other accounts as Operator reasonably determines to be necessary or desirable.

The Authorized Signatories shall be the only Persons authorized to draw from the Bank Accounts, and Operator shall be entitled to make deposits in all of such accounts, in accordance with the terms of this Agreement and Operator's standard accounting policies and practices. Operator shall establish controls to ensure accurate reporting of all transactions involving such accounts. As determined appropriate by Operator, accounts shall require positive pay and electronic reconciliation features to reduce possibilities of fraud. Programming costs related thereto shall be an Operating Expense. Unless due to Operator's grossly negligent or willful acts, any loss suffered in any of the Bank Accounts, or in any investment of funds into any such account, shall be borne by Owner, and Operator shall have no liability or responsibility therefor. The funds in the Operating Account(s) or any other account shall not be commingled with the funds of Operator or of any other person or entity

3.7 Working Capital. Owner shall commit the financial and other resources necessary to permit the Hotel to be operated and maintained in accordance with the Operator Standard and to enable Operator to take the actions necessary to comply with all applicable legal requirements. Pursuant to the foregoing obligation, Owner shall deposit into the Operating Account designated by Operator at least thirty (30) days prior to commencement of operations at the Hotel, in addition to amounts, if any, required to be provided by Owner in the Pre-Opening Budget, the initial working capital recommended by Operator in accordance with a cash flow estimate prepared by Operator and submitted to Owner approximately ninety days prior to the Opening Date, and updated as necessary thereafter (the "**Initial Working**

Capital”). Unless Operator shall otherwise consent thereto, such amount shall not be less than the amount set forth as the Minimum Initial Working Capital and shall be based on Operator’s best estimate of the working capital required to fund initial food and beverage inventories, initial minibar inventories, initial retail inventories and initial house bank balances, as well as payroll and operations for at least the first month of operation, and for such longer period as Operator may reasonably determine based on the cash flow estimate and the time of year in which the Opening Date occurs. The Initial Working Capital is separate from and in addition to any funds that Owner may be required to fund for pre-opening activities, including purchasing initial inventories of operating supplies and equipment. In addition, if at any time Operator determines that the available funds in the Bank Accounts are insufficient to allow for the uninterrupted and efficient operation of the Hotel in accordance with the terms of this Agreement, Operator shall notify Owner of the existence and amount of the shortfall (a “Funds Request”) and, within fifteen (15) days following the delivery of the Funds Request, Owner shall deposit into the Bank Accounts designated by Operator the funds requested by Operator in the Funds Request. If Owner fails to deposit all or any portion of the funds so requested and if Operator uses or pledges its credit (the parties agreeing that Operator shall have no obligation to do so) in making ordinary and customary purchases of goods and services for the Hotel on Owner’s behalf, Owner shall pay for such purchases when payment is due and shall indemnify and defend Operator against all losses, costs and expenses, including attorneys’ fees and costs, interest, and any late payment fees, that may be incurred by or asserted against Operator by reason of Owner’s failure to pay for such purchases. Owner shall pay interest to Operator on any advances that Operator may elect, without obligation, to make on Owner’s behalf in payment of any due and unpaid obligations of Owner to third parties at the lesser of (a) Prime Rate plus 3%, or (b) maximum rate of interest allowed by law; and such advances, with the interest thereon at the rate aforesaid, shall be due and payable by Owner to Operator on demand and Operator shall be entitled to reimburse itself therefor, with interest as aforesaid, out of any available funds from the operation of the Hotel.

3.8 Fund. During each Fiscal Year, Operator shall instruct Authorized Signatories to withdraw funds out of the Operating Account(s) and deposit for each calendar month of such Fiscal Year into the Fund to be used for purposes of funding Capital Expenditures and replacement of and additions to FF&E an amount equal to the following percentages of the Gross Revenues for each month during the relevant Fiscal Year: (a) for the first Fiscal Year, 2%; (b) for the second Fiscal Year, 3%; and (c) for the third and each succeeding Fiscal Year, 4%. The Fund shall be maintained in an interest-bearing bank account(s) designated by Owner, or in other investments designated by Owner, with due regard to the Hotel’s anticipated requirements for Capital Improvements and replacement of, and additions to, FF&E. Any interest or other income on amounts in the Fund shall become part of the Fund. Checks drawn upon the Fund account shall be signed only by Authorized Signatories. The monies in the Fund shall be the property of Owner. Subject to Section 6.3, Operator may cause to be withdrawn from the Fund any amounts required to make contributions to Capital Expenditures and to the cost of replacements of, and additions to, the FF&E deemed by Operator to be necessary to maintain the Hotel in accordance with the terms of this Agreement or otherwise desirable. To the extent that the monies in the Fund are insufficient to maintain the Hotel substantially in accordance with the standards set forth in this Agreement, then Operator shall notify Owner of the amount of additional funds reasonably necessary to maintain such standards, and Owner shall supply such additional funds as are mutually agreed to by the parties. Any Capital Improvements and items of FF&E replaced or added shall be the property of Owner (or the owner of the Guest Room Unit in which such improvement, replaced or added item is located, as applicable). Any amounts remaining in the Fund at the termination or expiration of the Term shall be retained by Owner. All proceeds from the sale of any replaced or obsolete FF&E in the Hotel Unit shall be deposited into the Fund.

3.9 Remittances to Owner. Unless the parties agree otherwise, on or about the 25th day of the succeeding calendar month, Operator shall disburse to Owner, as directed by Owner, any funds remaining in the Operating Account(s) at the end of the prior month after payment of all Operating Expenses (including any fees, charges or reimbursements owed to Operator) and other amounts payable in accordance with the terms of this Agreement and/or the Rental Agreement, after deposit of the amount due for such month in the Fund, and after retention by Operator of an amount sufficient to cover (a) all accrued but unpaid Base Fee, Centralized Services Charges and Reimbursable Expenses, plus (b) all known Operating Expenses and other amounts payable hereunder, plus (c) the monthly payroll expense for all Hotel Employee, plus (d) an additional amount of working capital as reasonably determined to be prudent by Operator but not less than the amount of Minimum Initial Working Capital, plus (e) such other amounts as may be agreed to from time to time by Owner and Operator. Any amounts remaining in the Bank Accounts on the termination of this Agreement shall be disbursed to Owner; provided, however, that Operator may deduct and retain prior to such disbursement any and all amounts owed by Owner to Operator and/or its Affiliates under this Agreement.

3.10 Owner's Representative. Owner shall appoint in writing an Owner's Representative, and shall inform Operator in writing if Owner's Representative is changed. Operator may conclusively rely on any instructions or approvals given to it by Owner's Representative during the term of his or her appointment as being the instructions or approvals of Owner.

3.11 Certain Operator Policies. Owner shall honor Operator's policies concerning the provision of discounted and complimentary food and beverage, which are offered to eligible Operator corporate employees, officers, members and directors, and to eligible employees of other Managed Hotels. The provision of discounted and complimentary rooms by Operator to its eligible Operator corporate employees, officers, members and directors, and to eligible employees of other Managed Hotels in accordance with Operator's policies regarding the same shall be as set forth in the Rental Agreements for Guest Room Units. All such policies shall be in accordance with normal and usual practice at other Managed Hotels, but shall be limited with respect to complimentary rooms, food and beverage as set forth in the approved Operating Plan for the applicable year.

3.12 Automation. The Hotel shall utilize all automation systems required by Operator to enable the Hotel to function as a Managed Hotel, in accordance with the terms and conditions of this Agreement and the Technical Assistance Agreement. Owner shall reimburse Operator for all out-of-pocket expenses incurred by Operator in the performance of the Automation Services in accordance with the Technical Assistance Agreement and this Agreement.

4. Compensation to Operator.

For its services during the Term, Operator shall be compensated as follows:

4.1 Base Fee. Operator shall receive an annual base management fee ("Base Fee") equal to the following: (i) from the Opening Date through the end of the first full Fiscal Year, 2.5% of Gross Revenues, (ii) during the second full Fiscal Year, 2.75% of Gross Revenues, and (iii) during the third full Fiscal Year and each Fiscal Year thereafter during the Term and any Extension, 3% of Gross Revenues; provided, the Base Fee for any Fiscal Year of the Term or any Extension shall not be less than \$500,000.00 (as prorated for any partial Fiscal Year).

4.2 Incentive Fee. Each Fiscal Year, in addition to the Base Fee, Operator shall receive an "Incentive Fee" equal to 15% of the annual Net Operating Profit.

In no event shall the calculation for the Incentive Fee in any Fiscal Year determine or impact, adversely or positively, the calculation of Incentive Fee for any subsequent Fiscal Year.

4.3 Time and Manner of Payment. The Base Fee and the Incentive Fee payable pursuant to Sections 4.1 and 4.2, respectively, shall be paid from the Operating Account. The payment of the Base Fee shall be made after the end of each month contemporaneously with Operator furnishing to Owner the unaudited financial statement for such calendar month pursuant to Section 9.3. The payment of the Incentive Fee shall be made at the end of each Fiscal Year contemporaneously with Operator furnishing to Owner the Certified Financial Statements for such Fiscal Year pursuant to Section 9.3.

4.4 Centralized Services Charges. Operator shall furnish or cause its Affiliates to furnish to the Hotel the benefits of the Centralized Services, and Owner hereby agrees that Operator may in its discretion cause the Hotel to participate in any or all such Centralized Services. Except as otherwise specifically set forth on Exhibit C, or as indicated from time to time by Operator, participation by the Hotel in all Centralized Services is mandatory. Without limiting the generality of the foregoing, Operator shall provide centralized marketing, sales and reservation services as follows:

(a) Operator shall maintain a marketing and sales program that promotes the brand identity of Operator and its Affiliates, advertises to Operator's and its Affiliates (including, without limitation, the Brand Name), markets and secures bookings for hotels and resorts, including the Hotel, operated under the Brand Names (the "Centralized Marketing Program"). In addition, Operator shall coordinate the Hotel's individual marketing program with the Centralized Marketing Program and, as appropriate, include the Hotel in the brand identity and national advertising programs conducted as part of the Centralized Marketing Program.

(b) Operator shall secure bookings for the Hotel through Operator's sales and reservations offices and other distribution and sales systems, and shall encourage the use of the Hotel by tourists, special groups, travel congresses, travel agencies, airlines and other recognized sources of hotel business. Operator shall develop a sales program, represent the Hotel at appropriate conventions and travel congresses, and list the Hotel in printings of general tariff bulletins. In addition, Operator shall process reservations for the Hotel through Operator's and its Affiliates' worldwide communications network. To facilitate Operator's provision of such reservations services, Owner agrees that:

(i) Owner shall not maintain, hyperlink to or otherwise use in connection with the Hotel any toll-free or similar telephone line or communications device (including, without limitation, any website or internet booking service) for making reservations that is independent of the reservations telephone line and communications device(s) maintained by Operator or its Affiliates in connection with the worldwide communications network of Operator and its Affiliates. The toll-free reservations telephone line or similar telephone number and other communications devices of Operator and its Affiliates (and those services to which Operator and/or its Affiliates subscribe or in which they otherwise participate) for making reservations must be the only telephone reservations line and communications devices for the Hotel. The Hotel must be listed in all airline reservations systems (which include what are known in the hospitality industry as Global Distribution Systems) under the applicable code for hotels and resorts operated under the Brand Name.

(ii) Throughout the Term, Owner shall permit Operator to load into the reservations system maintained by Operator and its Affiliates, and to maintain on a current basis, the Hotel's total Guest Room Units inventory and all associated room rates.

(c) Operator and its Affiliates shall be entitled to be paid for the existing Centralized Services based on the charges set forth on Exhibit C (as such charges may be increased to reflect increases in the Index from the date hereof and to reflect increases in the costs of operating, maintaining and upgrading such services). In addition, Operator and its Affiliates shall be entitled to be paid for any new Centralized Services based on the reasonable estimate made by Operator and its Affiliates of the costs and expenses that will be incurred in providing such services on a system-wide basis to Managed Hotels, which estimate of costs may include the allocation of salaries (including payroll taxes and employee benefits) of Corporate Personnel directly involved in the provision of the Centralized Services, overhead costs allocable to the provision of the Centralized Services, recovery of development costs, promotion costs, costs of operating, upgrading and maintaining such services and costs of all equipment employed in the rendition of such services. The Hotel's costs for participating in the Centralized Services (collectively, the "Centralized Services Charges") shall be determined in an equitable manner and on the same basis as allocated or charged to other Managed Hotels. In addition, if equipment and/or software is installed and maintained at the Hotel in connection with the provision of any Centralized Services, all costs thereof shall be paid by Owner and charged to the operation of the Hotel either as an Operating Expense or as a Capital Expenditure, as determined by the terms herein.

The Centralized Services Charges shall be paid monthly in arrears during the Term, and each monthly installment shall be due within five (5) days of the date on which such amount can be calculated.

4.5 Intentionally Omitted.

4.6 Purchasing. In the performance of its obligations, Operator may, in its discretion (subject to the following provisions) elect to purchase the items described therein under vendor contracts available to Operator under any purchasing program maintained from time to time by Operator and its Affiliates, provided that the prices and terms of the goods and services purchased under such vendor contracts are competitive with the prices and terms of goods and services of equal quality available from others. In determining, pursuant to the foregoing, whether such prices and/or fees are competitive, they will be compared to the prices and/or fees which would be charged by reputable and qualified unrelated third parties on an arm's length basis for similar goods and/or services. The goods and/or services which are being purchased may be grouped in reasonable categories, rather than being compared item by item. In respect of such purchases, Owner understands and acknowledges that Operator and/or its Affiliates may receive certain payments, fees, commissions or reimbursements from vendors, and that Operator and/or its Affiliates may have investments in such vendors and may profit from such payments, fees, commissions, reimbursements or investments. Notwithstanding the foregoing, upon prior written notice to Operator, Owner shall have the right to opt out of any purchasing program in respect of all purchases or such items as Owner may

designate in such notice. Operator shall act in a prudent manner in purchasing items for the Hotel (whether under a purchasing program or otherwise), but, in selecting such items for purchase, Operator shall be entitled to take into account the environmental consequences of its selections and the desirability of encouraging such objectives as recycling of materials.

5. Special Provisions.

5.1 Owner's Right to Terminate Based Upon Performance. After the expiration of the first five (5) full Fiscal Years of the Term, Owner will have the right to terminate Operator's management if in any two consecutive Fiscal Years (commencing with the fourth full Fiscal Year) the actual GOP for the Hotel is less than 90% of the budgeted GOP in the approved Operating Plan for each such Fiscal Year (the "GOP Test"). Such failure to achieve the GOP Test in any such two consecutive Fiscal Years shall constitute a "Performance Failure". Owner's termination notice must be given within 60 days after the Certified Financial Statements for the Hotel are complete for the last applicable Fiscal Year (or such termination will be waived during those Fiscal Years) and will be effective on the later of (x) the date specified in the notice, or (y) 60 days after the receipt of the notice. The GOP Test and Owner's right to terminate for a Performance Failure shall be subject to the impact of any Force Majeure Event or any Capital Improvement project or construction at the Hotel which may have prevented Operator from achieving the target GOP. In the event of a dispute between the parties as to whether a Performance Failure entitling Owner to terminate this Agreement in accordance with this Section has occurred or not, the dispute shall be resolved by an Expert in accordance with the procedures set forth in Section 6.4 hereof.

5.2 Voluntary Rental Program. Owner shall enter into separate rental agreements (the form of which shall be prepared by Owner and shall generally reflect the terms set forth in Exhibit G hereto and the final form of which shall be subject to Operator's reasonable prior written approval) with those owners of Residential Units desiring to submit their Residential Units to the Voluntary Rental Program for the exclusive rental of the same by Operator (on Owner's behalf) as part of the Hotel inventory ("Rental Agreements"). Any change to the approved Rental Agreement form which would have a material effect on Operator's operation of the Hotel in accordance with this Agreement or which would be likely to alter the dollar amount of the fees payable to Operator pursuant to the terms of this Agreement shall also be subject to Operator's reasonable prior written approval. Any approvals required herein with respect to the Rental Agreements by Operator shall be given or withheld by Operator within ten (10) business days from receipt of the form Rental Agreement or changes thereto which require Operator's approval. The Owner will timely deliver to Operator copies of all Rental Agreements executed with owners of Residential Units as and when fully executed.

Operator will manage all Residential Units which are subject to executed Rental Agreements (i.e. the Guest Room Units) in connection with Operator's operation of the Hotel in accordance with the Rental Agreements and this Agreement, and will offer such Guest Room Units for rental to guests of the Hotel. In furtherance of the foregoing, the Owner hereby appoints and designates Operator to act on Owner's behalf pursuant to the Rental Agreements and to perform any and all of Owner's duties, rights, remedies, obligations, responsibilities and objectives under the Rental Agreements. All amounts deducted from Guest Room Unit rental revenues pursuant to the terms of the Rental Agreements or otherwise collected by Operator pursuant to the Rental Agreements shall, unless committed to a specific purpose such as funding an operating or other reserve established or required by Owner or applied to repay Owner for amounts expended by Owner on behalf of a Guest Room Unit owner, be used by Operator when received by Operator on behalf of Owner, to offset the Hotel's Operating Expenses. The failure of Operator to receive in a timely manner from Guest Room Unit owners the foregoing amounts, shall not relieve the Owner from funding in a timely manner any amounts required to be funded by Owner under this Agreement (including, without limitation, any amounts needed for purposes of operating, maintaining, cleaning, repairing, insuring, replacing and/or refurbishing the Guest Room Units, and any costs and expenses in connection with Operator's performance of Owner's rights, duties, remedies or other matters as provided in this Section under the Rental Agreements. In the event that Owner funds amounts hereunder as provided in this paragraph, then Owner shall be reimbursed for such amounts when and if Operator receives the delinquent payments.

With respect to all Residential Units which as of the Opening Date are not subject to executed purchase agreements for sale by the Owner, Owner may (but has no obligation to) make such Residential Units part of the Voluntary Rental Program pursuant to Rental Agreements with the Operator on terms acceptable by the parties until such time as purchase agreements for the sale thereof have been executed by Owner.

5.3 Intentionally Omitted.

5.4 Non-Competition. Except as set forth below, for a period commencing on the date of execution of this Agreement until the end of the fifth (5th) year from the Opening Date, neither Operator, nor any of its Affiliates, shall either own, lease, manage, license or franchise a Brand Name hotel within the boundaries of the City of Fort Lauderdale, Florida (the "Restricted Area") it being understood: (i) that such restriction shall not be deemed to affect or refer to (a) any hotel or similar facility operated, whether within or outside of the Restricted Area, under the Westin, Sheraton, Four Points, W Hotels, or St. Regis brand names or under any other brand name other than the Brand Name, and (b) any hotel or similar facility owned, leased, managed, licensed or franchised under the Brand Name on the date hereof, within the Restricted Area, or any substitution, replacement, expansion or replacement of expansion of any of the foregoing, and (ii) that any such ownership, leasing, management, licensing or franchising outside of the Restricted Area shall be totally unrestricted. There shall be no prohibition on Operator or its Affiliates from owning, developing, managing or operating transient lodging facilities as a time-share or interval ownership project as part of the Starwood Vacation Ownership group within the Restricted Area or elsewhere. The foregoing restriction shall also not apply to the acquisition of any hotel in the Restricted Area acquired through a corporate merger involving more than one (1) hotel, or acquisition of a portfolio, or by other similar means. In addition, so long as this Agreement is in effect, neither Owner, nor any of its Affiliates, shall use any part of the Hotel, nor of the property of which the Hotel is a part nor any adjacent property, nor otherwise take any action in connection to the Hotel, to further or promote (i) any lodging facility or business (including any other hotel owned and/or operated by Owner or an Affiliate or of which a principal of Owner or an Affiliate holds an interest) operated under a trade name or trademark not owned by Operator or its Affiliates, including without limitation advertising or promotion of hotels, vacation or time-sharing facilities (or any similar product sold on a fractional or other basis with use rights on a weekly or other periodic basis), conference centers or other lodging products, or (ii) any other business or concession of Owner or its Affiliates, or any of their principals, such rights of promotion being strictly reserved to Operator and its Affiliates.

6. **Budgets.**

6.1 Preparation and Submission of Budgets. On or before November 1 of each Fiscal Year, Operator shall prepare and deliver to Owner, for its review and approval, a proposed Operating Plan for the next ensuing Fiscal Year, with annualized projections of Gross Revenue, Operating Expenses, and GOP for such Fiscal Year. The proposed Operating Plan for the next ensuing Fiscal Year shall be prepared in accordance with Operator's standard planning and budgeting requirements and shall contain the following items, which shall be set forth for each month of such Fiscal Year: (i) estimated results of operations (including estimated Gross Revenue, Operating Expenses, and GOP); and (ii) a description of proposed Capital Improvements to be made during such ensuing Fiscal Year and itemized estimated Capital Expenditures therefor (the "Capital Budget"), which Capital Budget shall include capitalized lease expenses and a contingency line item, as set forth below. The proposed Operating Plan also shall include a Hotel marketing plan for the activities to be undertaken by Operator, which plan shall include a description of the Hotel's target markets, the Hotel's relative position in those markets, the proposed room rate structures for each market segment, the current and future sales plan for the Hotel, the advertising and public relations plan for the Hotel, and the proposed staffing for the sales and marketing activities of the Hotel.

6.2 Approval of Proposed Budgets. Owner shall review the proposed Operating Plan and shall provide Operator with notice of its acceptance or rejection of such proposed Operating Plan in writing, and if rejected with the reasons for such rejection in reasonable detail, within thirty (30) days after receipt from Operator. Owner shall be deemed to have approved that portion of any proposed Operating Plan which Owner has not objected to within such time period. Owner and Operator shall meet within fourteen (14) days of Operator's receipt of Owner's objections, and shall discuss any objections made by Owner, and Operator shall then submit within fourteen (14) days from the conclusion of such discussions written revisions to the proposed Operating Plan following such discussion. Operator shall operate the Hotel in accordance with those items of the proposed Operating Plan that were mutually agreed to and, as to items not agreed to, such items shall be resolved in accordance with Section 6.4. To the extent that the parties agree to revisions of the Operating Plan, the proposed Operating Plan (modified to reflect such revisions) shall become the Operating Plan for the next Fiscal Year. Owner shall act reasonably and exercise prudent business judgment in approving or disapproving all or any portion of the Operating Plan, and

Owner must at all times act in a manner that shall permit maintenance and operation of the Hotel in compliance with the Operator Standard. Owner shall not have the right to reject (i) any costs associated with practices, procedures or programs which are Managed Hotels requirements such as Centralized Services, provided that charges for Centralized Services shall be assessed to the Hotel on the basis set forth in Exhibit C, or, for other such requirements, on the same basis (although not necessarily in the same overall dollar amount) as such charge is assessed to other Managed Hotels included in the group of hotels to be assessed; (ii) the contingency line item in the Capital Budget, except the portion of such contingency line item which exceeds \$25,000; (iii) compensation levels to Hotel Employee or in Operator's chain-wide or regional fringe benefit programs; (iv) items (such as room rates, menu or banquet prices, and the like) affecting the estimate of Hotel revenues; or (v) any expenditures required to be made under the express provisions of this Agreement including expenditures for Base Fees, Incentive fees, Centralized Services Charges, or Employment Costs.

6.3 Status of Budgets. During each Fiscal Year during the Term, Operator shall use its reasonable efforts to operate the Hotel in general accordance with the approved Operating Plan for such Fiscal Year (subject, in the case of any disputed items, to the provisions of Section 6.4). The parties recognize that the preparation of the Operating Plan for the first full Fiscal Year is inherently inexact and that Operator may vary from any such Operating Plan (other than the budget for Capital Improvements included in such Operating Plan, as to which the provisions of this Section 6.3 that follow this sentence shall apply) to the extent Operator reasonably determines that such variance is required for compliance with the Operator Standard. For the second (2nd) full Fiscal Year and each subsequent Fiscal Year, Operator shall not, without Owner's prior approval, which approval shall be deemed given if not denied within ten (10) days after the request, incur costs or expenses or make expenditures that would cause the total expenditures in the operating budget or the budget for Capital Improvements included in any Operating Plan to exceed the aggregate amount of expenditures provided for in such budget by more than ten percent (10%). Notwithstanding the foregoing, Owner understands and agrees as follows:

(a) Certain expenses provided for in the Operating Plan for any Fiscal Year will vary based on the occupancy and use of the Hotel; and, accordingly, to the extent that occupancy and use of the Hotel for any Fiscal Year exceeds the occupancy projected in the approved Operating Plan for such Fiscal Year, such approved Operating Plan shall be deemed to include corresponding increases in such variable expenses as well as any increases in resulting revenues.

(b) The amount of certain expenses ("Uncontrollable Expenses") including real estate and personal property taxes, utilities, insurance premiums, license and permit fees and charges provided for in contracts and leases entered into pursuant to this Agreement, are not within the ability of Operator to control. Operator shall have the right to pay from the Operating Account all Uncontrollable Expenses without reference to the amounts provided for in respect thereof in the approved Operating Plan for any Fiscal Year.

(c) If any expenditures are required on an emergency basis to avoid damage to the Hotel or injury to Persons or property, Operator may make such expenditures, whether or not provided for or within the amounts provided for in the approved Operating Plan for the Fiscal Year in question, as may reasonably be required to avoid or mitigate such damage or injury. Such expenditures shall be treated as Operating Expenses or Capital Expenditures as determined in accordance with the terms hereof; provided, however, that Operator may initially make such expenditure out of the Fund. If such expenditure is made out of the Fund, Owner shall within thirty (30) days thereafter replenish the Fund in the amount expended by Operator in accordance with the terms hereof. Operator shall notify Owner as promptly as reasonably possible of the making of any such expenditures.

(d) If any expenditures are required to comply with any applicable legal requirement or to cure or prevent any violation thereof, subject to Owner's prior right to contest or to direct Operator to contest such legal requirements or violation but only if such non-compliance or violation shall not pose an imminent threat of damage or injury to the Persons or property at the Hotel or an imminent threat to the continuing operation of the Hotel or any portion thereof in accordance with this Agreement, Operator may make such expenditures, whether or not provided for or within the amounts provided for in the approved Operating Plan for the Fiscal Year in question, as may be necessary to comply with such legal requirement or to remove or prevent the violation thereof. Such expenditures shall be treated as Operating Expenses or Capital Expenditures as determined in accordance with the terms hereof; provided, however, that Operator may initially make such expenditure out of the Fund. If such expenditure is made out of the Fund, Owner shall within thirty (30) days thereafter replenish the Fund in the amount expended by Operator in accordance with the terms hereof.

Operator shall have the right from time to time during each Fiscal Year (but not more frequently than quarterly) to propose modifications to the approved Operating Plan then in effect based on actual operations during the elapsed portion of the Fiscal Year in question and Operator's judgment as to what will transpire during the remainder of such Fiscal Year. Any such modifications shall be subject to Owner's approval, as provided in this Article 6. Any dispute relating to a proposed modification of an approved Operating Plan may be submitted by either party for resolution by an Expert in accordance with Article 6.4.

6.4 Resolution of Disputes Concerning Budgets. If the parties, despite their good faith efforts, are unable to reach final agreement on the Operating Plan for any Fiscal Year by January 1 of that Fiscal Year, those portions of the Operating Plan on which the Owner and Operator are not in agreement shall be settled by an Expert in accordance with this section.

(a) Expert. Either party may request to settle the dispute by an Expert. The terms of engagement of the Expert shall include an obligation on the part of the Expert to:

- (i) notify the parties in writing of his decision within thirty (30) days from the date on which the Expert has been selected (or such other period as the parties may agree); and
- (ii) establish a timetable for the making of submissions and replies.

(b) Procedure. Each party shall be entitled to make written briefs and present written evidence to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission. The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The Expert's fees and expenses shall be borne by the non-prevailing party as determined by the Expert. The foregoing dispute resolution proceeding shall take place in Broward County, Florida. The Expert's decision shall be final, binding and nonappealable, and may be entered in any court of competent jurisdiction in the United States or its territories.

Those portions of such Operating Plan that are not in dispute shall become effective on January 1 of such Fiscal Year. The prior year's Operating Plan shall govern the items in dispute, except that the budgeted expenses provided for such item(s) in the prior year's Operating Plan (or, if earlier, the last Operating Plan in which the budgeted expenses for such disputed item(s) were approved) shall be increased by the percentage increase in the Index during such prior Fiscal Year (and, if applicable, each additional Fiscal Year between the prior Fiscal Year and the Fiscal Year in which there became effective the last Operating Plan in which the budgeted expenses for such disputed item(s) were approved); provided, however, that if any item in dispute is submitted for resolution in accordance with this Section, the decision reached or issued in accordance herewith shall control as to such item.

The parties agree that certain disputes regarding insurance, more particularly referred to in Section 12.1 of this Agreement, shall also be resolved by an Expert in accordance with the procedures set forth in this Section 6.4(b).

6.5 Periodic Reviews. At Owner's request, the Managing Director of the Hotel shall meet with Owner on a monthly basis to review the Hotel's operating performance, and, with respect to any variances with the approved budget, any corrective action to be undertaken by Operator. On a quarterly basis, at Owner's request, Operator's appropriate senior company representative knowledgeable in the operating performance of the Hotel (which as of the date of execution of this Agreement such representative was known as the area director) shall meet with Owner to review the Hotel's operating performance against the approved Operating Plan.

7. Repairs and Maintenance. During the Term, the following provisions shall apply as to the maintenance and repair of the Hotel:

(a) The Hotel (including the Hotel building, adjacent grounds, FF&E and hotel equipment and operating supplies) shall be maintained and repaired by Operator at Owner's expense (or at Guest Room Unit owners' expense, as applicable), to permit maintenance and operation of the Hotel in accordance with the Operator Standard as contemplated in the Operating Plan in effect from time to time. Without limiting the generality of the foregoing,

Owner shall complete the Hotel in accordance with this Agreement.

(b) Except as otherwise set forth herein, the Fund shall be used solely for the purpose of funding Capital Expenditures included in the approved Operating Plan or otherwise proposed by Operator and approved by Owner, provided that Operator may also expend up to the amount of the contingency line item in the Capital Budget from the Fund during each Fiscal Year to pay any Capital Expenditures that Operator may reasonably determine to be necessary for items not included in the Capital Budget. In connection with any expenditure from the Fund that was not specifically contemplated in the Operating Plan, Operator shall attempt to notify Owner prior to the time that the expenditures in question are made and shall in any event notify Owner as soon as practicable after such expenditures are made.

(c) If the design or construction of the Hotel is defective, and the defective condition causes damage to the Hotel, poses a risk of injury to people or property, or is not in compliance with one or more legal requirements, Owner shall as expeditiously as possible remedy such defect. Owner's obligation to proceed expeditiously shall apply regardless of whether or when insurance proceeds may be available to cover the necessary expenditures, provided that the insurance company is afforded a reasonable opportunity to inspect such defect. Any amounts expended by Owner in effecting the remedy of any such defect shall not be deducted in determining Gross Revenue or GOP. None of the funds in the Bank Accounts shall be utilized in remedying such defects.

(d) Subject to the availability of sufficient amounts in the Fund or otherwise provided by Owner, Operator shall arrange for the completion of all Capital Improvements approved by Owner in the Operating Plan for any Fiscal Year or otherwise. The lack of sufficient monies in the Fund shall not limit Owner's obligations to make Capital Improvements required to maintain the Operator Standard or to provide funds sufficient (in addition to the amounts in the Fund) to enable Operator to complete and pay for all Capital Improvements provided for in an approved Operating Plan or otherwise approved by Owner or authorized under the terms of this Agreement.

8. Permits and Licenses.

Operator will cause to be applied for on behalf of Owner, and cause to be obtained, maintained, kept current and renewed from time to time all licenses and permits required for the operation of the Hotel, provided that Owner cooperates with Operator in executing and completing any applications required to obtain and maintain such licenses and permits. In the event Operator is unable to cause to be obtained a license or permit because of the physical limitation of the Hotel or because Owner (or any member of Owner or such member's principals) cannot be licensed, then Owner shall promptly cause such limitations to be corrected or cause such principal to withdraw so that all requisite licenses and permits are timely obtained and maintained. All licenses and permits will be applied for in the name of Owner or an Affiliate of Owner unless the issuing authority requires any such license or permit to be in the name of an individual, in which case such license or permit will be in the name of an Hotel Employee approved by Owner. Owner shall cooperate with Operator to cause to be obtained such licenses and permits as are to be held in the name of Owner or its nominee. If for any reason whatsoever, Owner fails to use its best efforts in cooperating with Operator as herein provided to obtain and maintain such licenses and permits, then Operator may (but shall not be obligated to) do so in Owner's name. Owner hereby designates Operator as its attorney-in-fact to obtain such licenses and permits on behalf of Owner, and Operator may execute whatever documents may be necessary or appropriate to permit Operator to obtain such permits and licenses. If for any reason other than through the negligence, wrongful acts or omissions of Operator or its default under this Agreement: (a) any of the Hotel's licenses or permits that are necessary to operate the Hotel or any bar or restaurant in the Hotel (including, without limitation, certificates of occupancy, food service permits, or liquor license permits) are revoked or terminated (prior to their expressed expiry date and are not renewed or replaced), or (b) Operator, despite using its diligent good faith efforts, is unable to obtain such permits or licenses; then Operator will have the right to terminate this Agreement upon 90 days prior written notice to Owner, provided that such licenses or permits are not renewed, replaced or obtained, as applicable, within such 90 day period. In the event that the events described in (a) or (b) hereof shall have occurred solely as a result of the negligence, wrongful acts or omissions of Operator or its default under this Agreement, then Owner will have as its sole remedy the right to terminate this Agreement upon 90 days prior written notice to Operator, provided that such licenses or permits are not renewed, replaced or obtained, as applicable, within such 90 day period. Operator and Owner will comply with the terms and conditions of all such permits and licenses.

9. Books and Records.

9.1 General. Operator shall, for the account of Owner, cause the appropriate Hotel Employees to keep complete and accurate books of account and other records on an accrual basis reflecting the results of operation and financial position of the Hotel, all in accordance with the Uniform System (including the Hotel's chart of accounts), and otherwise in accordance with generally accepted accounting principles. As between Operator and Owner, the statements prepared pursuant to Section 9.3 hereof shall control. All books and records of the Hotel, including, without limitation, both historical and budgeted or pro forma records or information (but excluding guest information and Operator's Proprietary Materials, all of which shall be the property of the Operator), shall be the property of Owner, and without Owner's prior consent, Operator shall not remove any of such books and records from the Hotel. At the termination or expiration of this Agreement, Operator shall turn over all such books and records which are the property of Owner to Owner. Operator may retain copies thereof for its tax and financial records, subject to any confidentiality obligations relating to such books and records. Guest information shall be the property of Operator and may be used by Operator and its Affiliates for any of their business purposes, provided however that upon termination of this Agreement for any reason, Operator shall provide Owner with copies of such guest information.

9.2 Right of Inspection and Review. Owner and its authorized agents shall have the right, upon reasonable advance notice (which shall be not less than 48 hours), to enter upon any part of the Hotel Units during normal business hours to examine or make extracts from the books and records of the operations of the Hotel, or for any other purpose that Owner, in its discretion, considers necessary or advisable. Any such examinations shall be done with as little disturbance as possible to the operation of the Hotel.

9.3 Financial Reports. Operator shall cause to be prepared and delivered reasonably detailed monthly operating reports to Owner, based on information available to Operator, that reflect operational results of the Hotel for each month of the Fiscal Year. Operator shall deliver each operating report to Owner on or before the twentieth (20th) day of the month following the month (or partial month) to which such operating report relates. The reports shall be in a format (which may be amended from time to time) substantially similar to the operating reports provided by Operator or its Affiliates to other Managed Hotels and in such other format and including such additional information as may reasonably be required by Owner or any Lender holding a first mortgage on all or a portion of the Hotel Units. At a minimum, monthly operating reports shall include: (i) a balance sheet including current month and prior year-end comparisons and differences in reasonable detail; and (ii) an income and expense statement for the month in question and for the elapsed portion of the current Fiscal Year through the end of such month, including variances that have occurred and that are anticipated between the applicable Operating Plan and actual results.

By April 30 of each Fiscal Year (beginning with April 30 of the second (2nd) Fiscal Year, for the first Fiscal Year), Operator shall cause to be prepared and delivered to Owner, as an Operating Expense, Certified Financial Statements for the preceding Fiscal Year. The Certified Financial Statements shall consist of a balance sheet and a statement of earnings. The Certified Financial Statements shall contain a certificate of the Designated Accountant to the effect that, subject to any qualifications contained therein, the financial statements fairly present, in conformity with GAAP, the financial position and results of operations of the Hotel for the Fiscal Year then ended. If Owner does not supply any information necessary for Operator to cause the Certified Financial Statements to be prepared and delivered and which is not otherwise available to Operator, Operator shall not be obligated to prepare such statements. Owner shall, nonetheless, deliver to Operator any similar financial statements that Owner causes to be prepared.

10. Representations and Warranties.

10.1 Representations and Warranties of Owner. Owner represents and warrants to Operator as follows:

(a) Authorization. Owner is a Florida corporation organized and existing under the laws of the State of Florida and is qualified to do business in the State of Florida. Owner has full power to enter into this Agreement, any other agreements referenced in this Agreement, including without limitation the Declaration, the Technical Assistance Agreement, the Rental Agreements, and any other agreements executed in connection therewith (collectively, the "Transaction Documents"); the execution, delivery, and performance of the Transaction Documents have been duly and validly authorized by all necessary action on the part of Owner, and the Transaction Documents, when executed and delivered by the parties,

shall be the valid and binding obligations of Owner. The execution, delivery, and performance of the Transaction Documents by Owner shall not conflict with or result in a breach of any provision of its formation or constituent documents, or cause a default under any agreement to which Owner is a party or by which or any of its assets may be bound, which default would have a material adverse effect on its business or financial position. This Agreement and the execution of this Agreement does not conflict with or result in a breach of any provision of the Declaration. Owner has delivered to Operator a certified copy of its formation documents together with a resolution authorizing Owner to enter into the agreement set forth in the Transaction Documents.

(b) Ownership of Land. Owner owns the Site subject only to the mortgages disclosed on Exhibit E attached hereto.

(c) Litigation. There is no pending, or, to the knowledge of Owner, threatened, claim or litigation, arbitration proceeding, or action of any kind against Owner, the outcome of which could have a materially adverse effect on the financial position, results of operations, or business of Owner, the Hotel, or which could question the validity of the Transaction Documents, or any of them.

(d) No Reliance. Owner has not relied on any projection of earnings or any statements as to the possibility of future success or other similar matter that may have been prepared by Operator, and Owner understands that Operator makes no guarantee as to the future financial success of the Hotel.

(e) Brokers. Other than Interlink Hospitality Corp., Owner has not entered into any agreement with any real estate broker, agent, finder, or any other party in connection with the Transaction Documents, and has not taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable by Operator with respect to the Transaction Documents. Owner agrees to indemnify and hold Operator harmless from any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) resulting to Operator by reason of a breach of this representation and warranty and as a result of any claim made by or through Interlink Hospitality Corp.

(f) Notice of Legal Proceedings. If Owner becomes aware of any action, suit, or proceeding (at law or in equity or before any governmental authority) that may affect the Hotel or this Agreement, then Owner shall promptly provide Operator with written notice thereof.

(g) Notice of Certain Defaults. If Owner becomes aware of any breach of, or default under, any contract, agreement, or other instrument, which breach or default adversely affects the Hotel or this Agreement, then Owner shall promptly provide Operator with written notice thereof.

10.2 Representations and Warranties of Operator. Operator represents and warrants to Owner as follows:

(a) Authorization. Operator is a Delaware corporation validly existing and in good standing under the laws of the State of Delaware. Operator has full power to enter into the Transaction Documents; the execution, delivery, and performance of the Transaction Documents have been duly and validly authorized by all necessary action on the part of Operator; and the Transaction Documents, when executed and delivered by the parties, shall be the valid and binding obligations of Operator. The execution, delivery, and performance of the Transaction Documents by Operator shall not conflict with or result in a breach of any provision of its Articles of Incorporation or its Bylaws, or cause a default under any agreement to which Operator is a party or by which or any of its assets may be bound, which default would have a material adverse effect on its business or financial position.

(b) Litigation. There is no pending, or, to the knowledge of Operator, threatened, claim or litigation, arbitration proceeding, or action of any kind against Operator, the outcome of which could have a materially adverse effect on the financial position, results of operations, or business of Operator, taken as a whole, or which could question the validity of this Agreement.

(c) No Reliance. Operator has not relied on any historical financial statement of the Hotel, or any projection of earnings or any statements as to the possibility of future success or other similar matter that may have been delivered or made available to Operator, and Operator understands that Owner makes no guarantee as to the future financial success of the Hotel.

(d) Brokers. Operator has not entered into any agreement with any real estate broker, agent, finder, or any other party in connection with the Transaction Documents, and has not taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable by Owner with respect to the Transaction Documents. Operator agrees to indemnify and hold Owner harmless from any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) resulting to Owner by reason of a breach of this representation and warranty.

(e) Notice of Legal Proceedings. If Operator becomes aware of any action, suit, or proceeding (at law or in equity or before any governmental authority) that may affect the Hotel or this Agreement, then Operator shall promptly provide Owner with written notice thereof.

(f) Notice of Certain Defaults. If Operator becomes aware of any breach of, or default under, any contract, agreement, or other instrument, which breach or default adversely affects the Hotel or this Agreement, then Operator shall promptly provide Owner with written notice thereof.

11. Payment of Taxes.

Operator shall cause the Hotel to pay all sales, use, value-added, Hotel occupancy taxes, and real and personal property taxes assessed against the Hotel, and all other taxes associated with the operation of the Hotel (other than taxes assessed on Operator's net income, and real estate taxes on Guest Room Units). Such taxes shall be paid from the Operating Account or from funds supplied by Owner. Notwithstanding the foregoing, Owner may contest the validity of the amount of any such taxes, without prejudice to Operator's rights under this Agreement, provided that such contest is permitted by applicable law and shall not in any way materially and adversely affect the operation of the Hotel or expose Operator to civil or criminal liability. The costs and expenses of such contest shall be an Operating Expense. Operator shall reasonably cooperate with Owner as Owner may request and execute any documents or pleadings reasonably required for such purpose, provided that (a) Operator is satisfied that the facts set forth in such documents or pleadings are accurate and that such execution or cooperation does not impose any liabilities, financial obligations, or other obligations of a material nature or costs and expenses on Operator and (b) Owner shall indemnify Operator from any loss, cost, damage, and expense that may result therefrom, such indemnification to be in form and substance reasonably satisfactory to Operator. To the extent that any such taxes directly affect Operator or Operator's rights under this Agreement, Operator may, at its own expense, contest the validity of the amount of any such taxes, and Owner shall cooperate with Operator as Operator may reasonably request and execute any documents or pleadings reasonably required for such purposes.

12. Insurance.

12.1 Maintenance of Insurance Coverage. Operator shall, at all times during the Term and at Owner's expenses (or Guest Room Unit owners' expense, as applicable), maintain insurance with respect to the Hotel with the coverages described in Exhibit D. In respect of such insurance, Owner understands and acknowledges that the premiums charged by Operator may include an administrative fee payable to Operator and/or its Affiliates as compensation for administering the insurance program, negotiating with participating insurers and, with respect to certain coverages, assuming the financial risk of providing first dollar (i.e., no deductible) or low deductible coverage.

If at any time during the Term any one or more of the coverages specified in Exhibit D shall be unavailable to Operator through blanket policies, Owner and Operator shall agree on how best to assure that such coverage is obtained and maintained or whether such coverage or an alternative thereto should be maintained. In the event that the parties are unable to reach agreement the issue shall be resolved by an Expert in accordance with the procedure set forth in Section 6.4 of this Agreement. In addition, if at any time Operator is unable to place any of the insurance described in Exhibit D at premiums and otherwise on terms and conditions (including amounts of coverage and deductibles) at least as advantageous to Owner as the premiums and other terms and conditions available to Owner under blanket insurance policies available to Owner from time to time, except for workers' compensation, employers liability, crime and

employment practices liability insurance, then Owner may arrange for such insurance through its blanket policies at Owner's cost and expense. If Owner desires to place its own insurance pursuant to this Section 12.1, Owner shall so notify Operator in writing at least sixty (60) days prior to the scheduled effective date of such insurance or any renewal thereof and provide Operator a ten (10) day period to review the package proposed by Owner, provided that Operator shall have no right to reject such package or policy except to the extent that the same does not conform to the requirements of Section 12.3, or that the limits of coverage or the rating of the insurance company does not conform to the requirements of this Section. To the extent that, and for so long as, the Hotel Employees are employees of Operator or any Affiliate of Operator, Operator shall have the sole right to provide workers' compensation, employer's liability insurance, crime and employment practices liability insurance.

The insurers for all insurance required by this Article 12 shall have a minimum AM Best's rating of A-VI (or equivalent, if AM Best should change its current rating system, or cease to exist) and shall be reasonably satisfactory to Owner and Operator.

12.2 Special Conditions or Hazards. Owner shall disclose to Operator prior to the commencement of the Term the presence of any condition or hazard existing as of the commencement of the Term that may create or contribute to any claims, damages, losses, or expenses not typically insured against by the coverages specified in Exhibit D. If any such condition or hazard requires removal, abatement, or any other special procedures, such special procedures shall be performed at Owner's expense in compliance with all legal requirements. Conditions or hazards to which this Section 12.2 refers include: latent risks to health including asbestos, silica, toxic or hazardous chemicals and waste products; hazards to the environment including underground and above ground storage tanks; and latent or patent toxic, nontoxic, abrasive, or irritant pollutants. At Owner's expense, Operator shall endeavor to obtain appropriate insurance coverages against such conditions and hazards to protect the interests of both Operator and Owner.

12.3. Parties Insured and Amounts of Coverage. All insurance policies provided for in this Article 12 shall include:

- (a) Operator and Owner as parties insured thereunder, as their interests may appear;
- (b) types of coverages and amounts as required in Exhibit D;
- (c) where applicable, mortgage (loss payable) endorsement(s) in favor of mortgagee(s), as their interests may appear;
- (d) where applicable and permitted under the applicable policy, the insurer's waiver of subrogation rights against Operator, Owner, and if applicable Guest Room Unit owners; and
- (e) a requirement that the insurer provide to all named insureds at least thirty (30) days' prior written notice of cancellation or material change (other than increases in coverage) in the terms and provisions of the applicable policy.

12.4. Evidence of Insurance. As soon as practicable prior to the effective date of the applicable coverages, the party obtaining the insurance coverages under this Article 12 shall provide the other party with insurance certificates evidencing that the applicable insurance requirements of this Agreement have been satisfied. As soon as practicable prior to the expiration date of each such policy, the party obtaining such insurance shall provide the other party with insurance certificates evidencing renewal of existing or acquisition of new coverages.

On request of the other party, each party shall furnish the other with a schedule of insurance obtained by such party under this Article 12, listing the policy numbers of the insurance obtained, the names of the companies issuing such policies, the names of the parties insured, the amounts of coverage, the expiration date or dates of such policies and the risks covered thereby.

12.5. Duties of Operator. Operator promptly shall:

- (a) coordinate with the appropriate party to cause to be investigated all accidents and claims for

damage relating to the operation and maintenance of the Hotel, as they become known to Operator, and report to Owner any such incident resulting in claims or losses in excess of five thousand dollars (\$5,000);

(b) cause to be investigated all damage to or destruction of the Hotel, as it becomes known to Operator, and report to Owner any such incident that is material, together with the estimated cost of repair thereof;

(c) prepare any and all reports required by any insurance company as the result of an incident mentioned in this Section 12.5, acting as the sole agent for all other named insureds, additional insureds, mortgagees and loss payees; and

(d) retain on behalf of Owner, and at Owner's expense, all consultants and experts selected by Owner, including architects, engineers, contractors, accountants and attorneys, as needed, to assist in analyzing any loss or damage, determining the nature and cost of repair and preparing and presenting any proofs of loss or claims to any insurers; provided that in the event that Owner shall not select such experts or consultants within thirty (30) days from Owner's receipt of notice from Operator, Operator shall be entitled to select the same so long as Operator's selection does not violate the terms of the applicable insurance policy and Operator shall obtain approval to its selection from Owner's insurance carrier if so required by the applicable insurance policy.

12.6. Review of Insurance. All insurance policy limits provided under this Article 12 shall be reviewed by the parties every three (3) years following the commencement of the Term, or sooner if reasonably requested by Operator, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing three (3) years. Owner and Operator hereby acknowledge that changing practices in the insurance industry and changes in the local law and custom may necessitate additions to types or amounts of coverage during the Term. Owner agrees to comply with any other insurance requirements Operator reasonably requests in order to protect the Hotel and the respective interests of Owner and Operator.

12.7. Waiver of Liability So long as each party is named as an insured or additional insured under the other party's policies of casualty insurance, or the policies otherwise permit where each party is not so named, each party hereby releases the other party, and its Affiliates and agents, and its and their officers and employees, from any and all liability for damage or destruction to its property (including, in the case of Owner, the Hotel Units and the FF&E), whether or not due to the negligent or other acts or omissions of the other party, its Affiliates or agents, or its or their officers or employees, where the damage or destruction is covered by the insurance policies of the releasing party.

13. Title; Encumbrances.

13.1 Owner's Warranties as to Title. Owner represents, warrants and certifies to Operator that Owner owns the Site and that it is not currently subject to any underlying lease, mortgage, deed of trust, security agreement, lien or other encumbrance securing the payment of money except as disclosed on Exhibit E attached hereto. Simultaneously with the execution of this Agreement or upon execution of the applicable Loan Documents by Owner and a Lender extending a loan listed on Exhibit E hereto (as applicable), Owner shall use commercially reasonable efforts to cause any Lenders extending a loan listed on Exhibit E to execute and deliver to Operator nondisturbance agreements with Operator in a form satisfactory to Operator and the applicable Lender, and providing that Operator's management and rights under this Agreement shall not be disturbed if such lease is terminated or mortgage or deed of trust is foreclosed if Operator is not in material Default under this Agreement; provided, however, that any such non-disturbance agreement may provide that the applicable Lender may terminate this Agreement in accordance with, and subject to, Section 22.4 hereof upon a transfer pursuant to a foreclosure of the applicable Loan Documents or pursuant to a deed in lieu of foreclosure, so long as such Lender pays Operator the Sale Termination Fee in accordance with Section 22.4 hereof. Except as otherwise provided above with respect to the Lenders and loans described in Exhibit E hereto, Owner shall use its best efforts to provide that the interest of Operator under this Agreement shall not be subject or subordinate to any ground or underlying leases, mortgages, deeds of trust, security agreements, liens, or other encumbrances affecting the Hotel Units, except those that contain, or are subject to, a non-disturbance agreement (in form reasonably satisfactory to Operator), to the effect that this Agreement and Operator's rights under this Agreement shall not be subject to forfeiture or termination except in accordance with the provisions of this Agreement, notwithstanding a default, termination, foreclosure, or exercise or a power of sale under such lease, mortgage, deed of trust, security agreement or other encumbrance or any

obligation secured thereby. Operator agrees to subordinate its interest and rights under this Agreement to any now or hereafter existing ground or underlying leases, mortgages, deeds of trust, or security agreements held by a third party that is not an Affiliate of Owner, and Owner shall use commercially reasonable efforts to provide that the holders of such instruments enter into nondisturbance agreements with Operator in a form reasonably satisfactory to Operator and, except as otherwise provided above with respect to the Lenders and loans described in Exhibit E hereto, providing that Operator's management and rights under this Agreement shall not be disturbed if such lease is terminated or mortgage or deed of trust is foreclosed if Operator is not in material Default under this Agreement.

13.2 Compliance with Terms of Mortgage. Owner and Operator covenant and agree to comply with the terms and provisions of any ground or underlying lease, Loan Document, or other encumbrance as they may be modified from time to time affecting the Hotel Units, so long as Owner makes such terms and provisions available to Operator. Operator agrees to make such modifications to this Agreement as may be reasonably requested by a Lender, so long as such modifications do not materially increase Operator's obligations or materially reduce Operator's rights and benefits under this Agreement.

13.3 Liens and Encumbrances. Operator shall not create or permit to be created or remain in existence, and shall discharge, any lien (including, but not limited to, the liens of mechanics, laborers, artisans, or materialmen for work or materials alleged to be done or furnished in connection with Operator's operation of the Hotel), encumbrance, or other charge upon the Hotel Units or any part thereof, or upon Owner's interest therein caused by Operator, its agents, contractors or employees, provided that Operator shall not be responsible for preventing nor be required to discharge any such liens, encumbrances, or charges as may be placed upon the Hotel Units by the act of Owner or its agents (other than Operator), under any Loan Document, by operation of law, or with the specific approval of Owner.

13.4 Estoppel Certificates. Operator and Owner agree that from time to time, as requested by the other party, upon not less than ten days prior written notice, to execute and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications), certifying the dates to which required payments have been paid, and stating whether, to the knowledge of the signatory, the party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signatory has knowledge, and such other information as is reasonably pertinent to this Agreement, any loan document or other document pertaining to development, ownership and operation of the Hotel and condominium associations.

14. Casualty and Condemnation.

14.1 Owner's Obligation to Repair. Subject to the provisions of Sections 14.2 below, if the Hotel, or any portion thereof is damaged or destroyed at any time or times during the Term by fire or other insured casualty, Owner shall, with due diligence, subject to any consents required in the Declaration from the Condominium and the consent of any Lender if so required under the applicable Loan Documents (which consents Owner shall diligently seek) and subject to the sufficiency and availability of insurance proceeds therefor, repair, rebuild, or replace the same, or if any such proceeds are paid or payable to the Condominium Association, use best efforts to cause such parties to so repair, rebuild, or replace the same, so that the Hotel is substantially the same as prior to such damage or destruction. If Owner, or the Condominium Association, as the case may be, fails to undertake such work within 180 days after the fire or other casualty, or fails to complete the same diligently, then Operator may, at its option, terminate this Agreement by written notice to Owner, effective as of the date sent. Notwithstanding the foregoing, (a) if Owner is prevented by a Force Majeure Event from undertaking such restoration during such period, then the time during which Owner shall be able to undertake such repairs shall be extended during the continuation of such Force Majeure Event; and (b) if Owner, despite its reasonable efforts, is unable to obtain the building permits or consents necessary to repair or rebuild the Hotel, or if such permits or consents are subject to conditions with which it would be unreasonable to expect Owner to comply, then Owner will not be required to repair, rebuild, or replace the Hotel or damaged portion thereof, but instead may terminate this Agreement. During the period of such repair, rebuilding or replacement or during the period prior to such termination, as applicable, Operator shall be entitled to receive from the proceeds of business interruption insurance required to be obtained by Owner pursuant to this Agreement, the Base Fee, Incentive Fees, and Centralized Services Charges based on the greater of actual Gross Revenues during such period or pro forma Gross Revenues established in the approved Operating Plan (as if such casualty never occurred).

14.2 Casualty Near End of Term. If the Hotel is rendered substantially unusable due to fire or other casualty within three (3) years prior to the expiration of the Term (including any Extensions), then either Owner or Operator may terminate this Agreement within 90 days after the occurrence of such damage or destruction by giving written notice to the other party irrespective of the insurance coverage applicable to such damage or destruction.

14.3 Reinstatement. Omitted.

14.4 Condemnation. If the entire Hotel is taken or condemned in an eminent domain, condemnation, compulsory acquisition or similar proceedings, or by a conveyance by Owner in lieu thereof, or if a portion of the Hotel is so taken or condemned as to make it imprudent or unreasonable, in Owner's and Operator's reasonable opinion, to operate the remaining portion as an luxury hotel in accordance with Operator Standards and in accordance with this Agreement, then, in either of those events, this Agreement shall terminate effective as of the time that Operator is required to surrender possession of the Hotel, or cease operation thereof, as a consequence of the taking or condemnation or similar proceeding; provided, however, that the condemnation or taking award shall be fairly and equitably apportioned between Owner and Operator (subject to any limitations contained in the applicable Loan Documents) so as to compensate Operator for any loss of income resulting from the termination of this Agreement pursuant to this Section in an amount not to exceed \$1,000,000.00.

If only a part of the Hotel is taken or condemned and the taking or condemnation of that part does not make it financially or operationally unreasonable or imprudent, in Owner's and Operator's reasonable opinion, to operate the remaining portion in accordance with Operator Standards and with the terms of this Agreement, then this Agreement shall not terminate and the award to Owner, or so much thereof as is reasonably necessary to repair any damage to the Hotel, or any part thereof, or to alter or modify the Hotel, or any part thereof, so as to make the Hotel a complete and satisfactory architectural unit as an luxury hotel to be operated in accordance with Operator Standards, shall be used by Owner for repairs, alterations, or modifications. The remainder of the award, if any, shall be fairly and equitably apportioned between Owner and Operator so as to compensate Operator for any loss of income resulting from the taking or condemnation subject to any limitations contained in applicable Loan Documents.

15. Indemnity by Owner.

Except as provided in Article 17 below, Owner shall indemnify and hold harmless Operator and its members, manager, directors, officers, employees, trustees, shareholders, partners, and agents and representatives (collectively, "**Operator Indemnified Parties**") from and against any and all claims, liability (including all costs and reasonable attorneys' fees), loss, damages, costs, and expense (collectively, "**Damages**") arising out of the marketing, offering for sale and/or sale of Residential Units and/or the Voluntary Rental Program, or any action or omission or course of action on the part of a Operator Indemnified Party in the performance of its obligations under this Agreement, the Rental Agreements, the Technical Assistance Agreement or otherwise in connection with any obligations to any third parties that are authorized by this Agreement, the Rental Agreements, the Technical Assistance Agreement or otherwise approved by Owner, including, without limitation, any Damages arising out of or resulting from (i) damage to property, or injury to, or death of, persons (including the property and persons of the parties hereto), (ii) all Employment Costs related directly to the Hotel Employees, (iii) any violation of the laws, rules and regulations of the United States and/or the State of Florida or any other state governing the sale, offering for sale or registration of securities, (iv) any violation of the laws, rules and regulations of the State of Florida or of any other applicable state governing the creation, sale, or offering for sale of the Condominium Units, (v) Operator's operation of the Voluntary Rental Program, Operator's performance of Owner's responsibilities and powers with respect to the billing, imposition and collection of the Shared Costs against owners of Condominium Units, Operator's use of the collected Shared Costs in the operation of the Hotel Units, or Operator's administration and performance of Owner's duties and responsibilities under the Rental Agreements, and (vi) DAMAGES RESULTING FROM THE NEGLIGENCE OF ANY OPERATOR INDEMNIFIED PARTY; provided, that this indemnity shall not apply to any Damages resulting from the gross negligence or intentional misconduct of any Operator Indemnified Party. Any claim for indemnification pursuant to this Article 15 must be brought within five (5) years after the expiration or earlier termination of the Term.

16. Indemnity by Operator.

Except as provided in Article 17 below, Operator shall indemnify and hold harmless Owner and its members, manager, directors, officers, employees, trustees, shareholders, partners, and agents and representatives (collectively, "Owner Indemnified Parties") from and against any and all Damages arising out of or resulting from the gross negligence or intentional misconduct of Operator, provided that this indemnity shall not apply to any Damages resulting from the gross negligence or intentional misconduct of any Owner Indemnified Parties. Any claim for indemnification pursuant to this Article 16 must be brought within five (5) years after the expiration or earlier termination of the Term.

17. Mutual Release.

Each party ("Releasing Party") hereby releases the other ("Released Party") from any liability that the Released Party would, but for this Article 17 have had to the Releasing Party arising out of or in connection with any accident or occurrence or casualty to the extent that it is covered by insurance being carried, or would be covered by insurance that under the terms of this Agreement is supposed to be carried, by the Releasing Party, its officers, agents, members or employees.

18. Interest on Overdue Sums.

Except as otherwise expressly provided in this Agreement, if either party fails to pay, when due, to the other party any sum payable to the latter under this Agreement, then the defaulting party shall, without notice to or demand upon it, be liable to the non-defaulting party for the payment of such sum together with interest thereon at the rate per annum equal to the lesser of (i) the Prime Rate plus 2% or (ii) the maximum rate of interest allowed by law from the date when such sum becomes due to the date of actual payment.

19. Termination.

19.1 Termination Resulting from Technical Assistance Agreement.

(a) Operator shall have the option to terminate this Agreement upon any termination of the Technical Assistance Agreement. In addition to Owner's right to terminate this Agreement as provided in Section 5.1 hereof, this Agreement shall automatically terminate upon termination of the Technical Assistance Agreement pursuant to Section 13.1 of the Technical Assistance Agreement.

(b) Owner and Operator shall have ten (10) business days from the effective date hereof to execute the Technical Assistance Agreement whereby Operator agrees to advise Owner in connection with the planning, decorating, furnishing, and equipping of the Hotel Units and the Guest Room Units, and failing such execution by the date provided, this Agreement shall be terminable by either party on written notice to the other.

19.2 Termination Prior to Opening Date.

If Commencement of Construction, as that term shall be defined in the Technical Services Agreement, has not occurred by December 31, 2002, either party shall have the right to terminate this Agreement upon written notice to the other. Notwithstanding the foregoing, if this Agreement is terminated in accordance with this provision and within five years from the date of the termination Owner or an Affiliate commences or intends to commence the development or construction or takes or intends to take any action in furtherance of the development or construction of a luxury hotel on the same site, then Owner shall promptly notify Operator in writing of such intention or action (which notice shall set forth in reasonable detail the character of the contemplated hotel development or construction) and at Operator's election (exercisable by written notice given to Owner within 60 days following receipt of Owner's notice or, if no such Owner's notice is given, Operator's actual knowledge of such intention or the commencement and the character of the hotel development or construction) this Agreement shall be reinstated (with only such amendments as are required due to changes in the type, scope or design of the project).

19.3 Termination Due To Default.

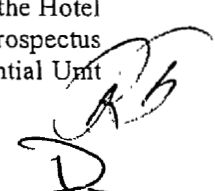
A non-defaulting party has the right to terminate this Agreement if a "Default" under Section 19.3 hereof shall occur, or if any of the following "Defaults" shall occur: (a) a party fails to pay an amount due to the other party hereunder for a period of twenty days after the date on which notice of failure has been given to the defaulting party by the other party; (b) the other party fails to perform, keep or fulfill any of the material covenants, obligations, or conditions set forth in this Agreement (other than a failure to pay an amount of money due hereunder, which is subject to the preceding clause (a)) and such failure continues for a period of 30 days after receipt by the defaulting party of written notice from the other party specifying such failure, provided that if the default is not susceptible of being cured within the 30 day period and the defaulting party advises the other party in writing thereof, and such party commences such cure within such 30 day period and thereafter diligently pursues such cure to completion, then no Default shall be deemed to have occurred unless and until the defaulting party fails to take or fails to continue to take action to complete the cure as set forth above. In addition to the non-defaulting party's right of termination set forth in this Section 19.2, a non-defaulting party shall be entitled to pursue all other remedies available to it under applicable law or in equity as a result of such Default.

19.4 Termination Due to Acts of Insolvency. Either party may terminate this Agreement by written notice to the other party and may regard the other party as in Default if the other party becomes insolvent, makes a general assignment for the benefit of creditors, permits the appointment of a receiver of its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, or has wound up or liquidated.

19.4 Effect of Termination. If this Agreement is terminated, then Operator shall be entitled to prompt reimbursement of all expenses incurred by it through the effective date of termination, which are properly reimbursable hereunder, as well as the prompt payment of all fees and other amounts payable to Operator under this Agreement through the effective date of termination. All amounts owing to Operator after any such termination shall be paid within 45 days after the effective date of termination. Termination of this Agreement shall be in addition to, and not in lieu of, any other rights or remedies provided hereunder or at law or in equity by reason of the occurrence of any such Default, it being understood and agreed that the exercise of the remedy of termination shall not constitute an election of remedies and shall be without prejudice to any such other rights or remedies otherwise available to the non-defaulting party.

20. Hotel Name and Brand Names. Owner hereby grants Operator the non-exclusive right to use the Hotel Name during the Term in connection with the marketing and promotion of the Hotel. Owner shall diligently seek to obtain such trademark, service mark, or trade name protection of the Hotel Name in such jurisdictions as Operator reasonably requires. Operator's right to use the Hotel Name shall expire upon the expiration or other termination of this Agreement. During the Term, in connection with its performance of services under this Agreement, Operator shall also have the right to use the Hotel Name in conjunction with the Brand Names. Operator acknowledges that the Hotel Name is the exclusive property of Owner. Accordingly, Operator agrees that no right or remedy of Operator for any default of Owner hereunder, shall confer upon Operator, or any Person claiming by or through Operator, the right to use the Hotel Name except as expressly provided herein; provided, however, upon the termination of this Agreement, Operator may use the Hotel Name in its references to Hotels that it has previously managed, and Operator shall have the right to use, in the ordinary course of business only, any marketing materials bearing the Hotel Name for a period of time ending upon the earlier of (i) 120 days after the termination of this Agreement or (ii) when the marketing materials bearing the Hotel Name have been consumed or used. In the event of any breach of this covenant by Operator, Owner shall be entitled to relief by injunction, and to all other available legal rights or remedies, and this provision shall survive the expiration or sooner termination of the Term.

From and after the mutual execution and delivery of this Agreement by Owner and Operator, and continuing thereafter until this Agreement is terminated, and subject to the provisions of this Agreement, Operator grants to Owner a non-exclusive, non-assignable and non-transferable license to use the Brand Names in connection with the marketing and sale of the Residential Units and the Voluntary Rental Program; provided that (i) all advertising, sales and marketing materials shall be submitted by the Owner to Operator for written approval of the contents thereof prior to the use of such materials or dissemination of such materials to the public (including, without limitation, prior written approval with respect to the use of any individual hotel or resort name other than this Hotel, or to the use of a listing of other Operator hotels and resorts), which approval shall not be unreasonably withheld or delayed, (ii) Owner may include in its advertising a statement that the manager and operator of the Hotel will be Operator, (iii) appropriate disclosures approved by Operator in advance shall be included in the Prospectus for the Condominium with respect to Operator's relationship to the Condominium, the Owner, the Residential Unit



owners and the Hotel Unit, and the duration of Operator's engagement at the Hotel (including disclosure that this Agreement may be earlier terminated), and (iv) Owner shall obtain (and deliver to Operator) from each Residential Unit owner at the closing of the sale of each Residential Unit an executed certificate in favor of Operator whereby the Residential Unit owners acknowledge the matters set forth in (iii) above in such form and substance as approved by Operator in advance. Such license shall be terminated immediately upon the termination or expiration of this Agreement.

Owner acknowledges that the Proprietary Materials, and the Brand Names (when used either alone or in conjunction with the Hotel Names or any other word or words), are the exclusive property of Operator. Owner shall not use or permit the use of the Brand Names or the Proprietary Materials except in accordance with this Agreement or as otherwise approved by Operator. Accordingly, Owner agrees that no right or remedy of Owner for any default of Operator hereunder, or the delivery of possession of the Hotel or any provision of this Agreement, shall confer upon Owner, or any Person claiming by or through Owner, the right to use the Proprietary Materials or any of the Brand Names (either alone or in conjunction with the Hotel Name or any other word or words), in connection with the use or operation of the Hotel or otherwise. Upon the termination of this Agreement, Owner and its Affiliates shall return to Operator all Proprietary Materials (including any Proprietary Materials in digital form), and shall not use the Proprietary Materials; provided that Owner shall have the right to use, in the ordinary course of business only, any operating supplies and marketing materials bearing any Brand Name for a period of time ending upon the earlier of (i) 120 days after the termination of this Agreement, or (ii) when the operating supplies and marketing materials bearing the Brand Names have been consumed or used. In the event of any breach of this covenant by Owner, Operator shall be entitled to relief by injunction, and to all other available legal rights or remedies, and this provision shall survive the expiration or sooner termination of this Agreement.

21. Notices.

21.1 Notices in Writing. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request will be made in writing and sent via prepaid courier or telecopier, or deposited in the mail, registered or certified, return receipt requested, airmail postage prepaid, addressed to the addresses (and persons) set forth below:

As to Operator: 1111 Westchester Avenue
 White Plains, New York 10604
 Attn: General Counsel
 914.640.8260

 With a copy to:
 1111 Westchester Avenue
 White Plains, New York 10604
 Attn: President, North America Division
 914.640.8260

As to Owner: Luxury Resorts International, Inc.
 One Fisher Island Drive
 Fisher Island, FL 33109
 Attention: Mr. Daniel Melk
 Telecopier Number: (305) 535-6036

Telephone Number: (305) 535-6046

With a copy to:
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131
Attn: Mr. Gerald Wish, Esq.

21.2 Receipt. Any notice, demand, or request that is served upon any party will be deemed sufficiently given to and received by such party for all purposes under this Agreement if sent to the address specified by the party to receive such notice, and (i) if sent via courier, at the time such notice, demand or request is personally delivered, (ii) if sent via telecopy, at the time of receipt by such party with a copy sent via certified mail, return receipt requested, or (iii) if sent via registered or certified, return receipt requested, airmail postage prepaid, five (5) days from the date so deposited in the mail; provided that any party may change its address hereunder by notice to the other party hereof in accordance with this Article 21.

22. Assignment and Transfer.

22.1 Assignment by Operator. Operator may assign its rights and obligations under this Agreement without the consent of Owner (provided written notice is given to Owner on or immediately after such transfer) (i) to any Affiliate of Operator or (ii) to any assignee (a) who also acquires all, or substantially all, of the assets of Operator and any Affiliates thereof, which assignee continues to manage or operate luxury hotels under the Operator name, and (b) assumes by a written document executed and delivered to Owner all of Operator's and such Affiliates' liabilities and obligations under this Agreement arising prior to, on and after such assignment. Operator may assign its rights to receive fees or portions thereof as security for indebtedness of Operator, but no such assignment may defeat any offset rights or termination rights of Owner against Operator hereunder. Except as provided in this Section 22.1, Operator shall not assign any of its rights or obligations under this Agreement without the approval of Owner.

22.2 Ownership Transfer. So long as Owner is not in default beyond applicable notice and cure periods hereunder, Owner may consummate an Ownership Transfer described in clause (a) of the definition of Ownership Transfer set forth below on arms-length terms and conditions to a bona fide third party who is a Qualified Transferee, upon delivery to Operator of: (a) written notice of such transfer, along with evidence (in such commercially reasonable scope and detail) as shall be necessary to substantiate that such third party transferee is a Qualified Transferee, and (b) an executed assumption agreement reasonably satisfactory to Operator pursuant to which such transferee assumes all of Owner's obligations hereunder (the "Assumption Agreement").

In the event that Operator determines that the transferee is not a Qualified Transferee or that the Ownership Transfer or Assumption Agreement does not comply with this Section, or in the event that Owner consummates an Ownership Transfer described in clause (b) of the definition of Ownership Transfer set forth below, Owner shall be in Default hereunder and Operator shall be entitled to terminate this Agreement effective as of the date of such Ownership Transfer upon written notice to the Owner. In the event of a dispute between the Owner and Operator as to whether an Ownership Transfer complies with the requirements of this Section, either party may submit the dispute to arbitration pursuant to Section 24.3 hereof.

Except as provided in this Section 22.2, Owner may not consummate any Ownership Transfer or assign any of its rights or obligations under this Agreement without the approval of Operator. As used in this Section 22.2, "Ownership Transfer" means (a) any sale, assignment, conveyance, lease, or other transfer of all or any part of the Hotel Units or any interest therein or of Owner's rights thereunder or of Owner's rights under the then effective Rental Agreements (other than a collateral assignment of any of such rights to a Lender, or any transfer to a Lender pursuant to a foreclosure of its interest or pursuant to a deed in lieu of foreclosure), or (b) the voluntary or involuntary sale, assignment, transfer or other disposition, or transfer by operation of law (other than by will or the laws of intestate succession) of a controlling interest in Owner. For purposes of this Section 22.2, "control" has the meaning given that term in the definition of "Affiliate" in Section 1 hereof.

A handwritten signature in black ink, appearing to be 'R. B. D.', is located in the bottom right corner of the page.

22.3 Release. Upon the consummation of any permitted assignment or other transfer of this Agreement in accordance with this Article 22 to any Person other than an Affiliate of Owner or Operator, as applicable, the transferring party shall be released from all of its obligations under this Agreement accruing after the effective date of such assignment or transfer.

22.4 Sale of Hotel Units – Termination Right. Notwithstanding the provisions of Section 22.2, so long as Owner is not in default beyond applicable notice and cure periods hereunder, Owner shall have the right at any time after the end of the sixth (6th) year from the Opening Date until the expiration of the initial 10-year Term hereof to cause, suffer or permit one Ownership Transfer of (a) all of the Hotel Units and the Rental Agreements to one bona fide purchaser who is not an Affiliate of Owner (such purchaser is referred to as the “Successor Owner”), or (b) 50% or more of Owner's equity interest to any Successor Owner without being required to obtain the consent of Operator; provided, however, that (a) notice of termination is delivered to Operator not less than one hundred twenty (120) days prior to the date upon which such Ownership Transfer is to be consummated, (b) this Agreement will terminate on the date such Ownership Transfer is consummated, and (c) Owner pays to Operator the Sale Termination Fee out of the sales proceeds of such Ownership Transfer on the date such Ownership Transfer is consummated.

23. Termination Transition.

Upon the termination of this Agreement, Operator shall (i) use reasonable efforts to provide for a smooth transition in the operation of the Hotel, and (ii) deliver to Owner or its designee all materials and supplies, contracts and documents pertaining to the Hotel, and all papers and records pertaining to this Agreement and the operation of the Hotel.

24. Dispute Resolution.

24.1 General. The parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the dispute resolution procedures set forth in this Article 24 as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach (except with respect to disputes relating to the approval of the Operating Plan which will be resolved as provided in Article 6, or termination due to a Performance Failure which will be resolved as provided in Section 5.1).

24.2 Parties' Discussions to Resolve Dispute. At the written request of either party, the parties to the dispute shall appoint knowledgeable, responsible representatives to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives, including at least one senior executive of each party to the dispute. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Discussion and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

24.3 Arbitration. If the negotiation conducted pursuant to Section 24.2 does not resolve the dispute within 30 days of the commencement of the negotiation, the dispute shall be submitted to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be heard and determined by a panel of three arbitrators, two of which must have not less than five years experience in the luxury hotel field or as a consultant to the luxury hotel industry, and one of which must be a reputable attorney with not less than five years experience in civil business litigation. Should the parties be unable to agree upon the arbitrators, then the arbitrators on which the parties do not agree shall be appointed by the American Arbitration Association. Any party may demand such arbitration in accordance with the procedures set out in those rules. Each party shall have the right to take the deposition of up to five individuals (or a larger number of individuals with the consent of two of the three arbitrators), and any expert witness designated by the other party. Each party shall also have the right to request production of relevant documents, the scope and enforcement of which shall be governed by the arbitrator. Additional discovery may be only by order of the arbitrators, and only upon a showing of substantial

need. The arbitrators shall be authorized to issue subpoenas for the purpose of requiring attendance of witnesses at depositions. The arbitration shall be commenced within ten days of the determination that negotiation is not going to be successful. The arbitration shall be held in Broward County, Florida, or such other location as mutually agreed upon by the parties. The arbitrators shall control the scheduling so as to process the matter expeditiously. The parties may submit written briefs. The arbitrators shall rule on the dispute by issuing a written opinion within 30 days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrators upon a showing of good cause. The award rendered by arbitration shall be final, binding and nonappealable judgment and the award may be entered in any court of competent jurisdiction in the United States. **THE ARBITRATORS SHALL HAVE NO AUTHORITY TO AWARD ANY PUNITIVE OR EXEMPLARY DAMAGES OR TO VARY OR IGNORE THE TERMS OF THIS AGREEMENT, AND SHALL BE BOUND BY CONTROLLING LAW.**

24.4 Confidentiality. The parties agree that all communications and negotiations between the parties during the dispute resolution process, any settlements agreed upon during the dispute resolution process and any information regarding the other party obtained during the dispute resolution process (that are not already public knowledge) are confidential and may be disclosed only to employees, lenders, principals, advisors, attorneys, accountants and agents of the parties who shall have a "need to know" the information and who shall have been made aware of the confidentiality obligations set forth in this section, unless the party is required by law to disclose such information.

24.5 Fees and Expenses. Any party found by the arbitrators to have breached this Agreement shall pay all other out-of-pocket expenses and all arbitrators' fees, including reasonable attorney's fees and expenses, of the other party incurred in connection with the dispute resolution process. If the arbitrator does not find that any party has breached this agreement, then each party shall bear its own costs and expenses, including attorney's fees and expenses, and the arbitrators' fees shall be split equally among the parties.

25. Miscellaneous.

25.1 Force Majeure. If either party is delayed or prevented from fulfilling any obligations under this Agreement by any Force Majeure Event (other than an obligation to pay money), then such party shall not be liable under this Agreement for such delay or failure, provided that such party shall use reasonable efforts to mitigate the effect of such event.

25.2 Binding on Successors. The terms, provisions, covenants, agreements, and obligations of this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and the permitted assigns of the parties hereto.

25.3 Captions. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

25.4 Amendment. No provision of this Agreement may be amended, changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of the amendment, change, waiver, discharge, or termination is sought.

25.5 Entire Agreement. This Agreement together with the Exhibits attached hereto embody the entire agreement between the parties with relation to the transactions contemplated by this Agreement, and supersedes all prior agreements relating to the subject matter hereof. No other extrinsic representations, warranties, or promises, made prior to the signing of this Agreement, other than those expressly stated and incorporated herein, shall bind the parties or create any legal obligations whatsoever.

25.6 Third Parties. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective heirs, executors, personal representatives, successors and assigns, any rights or remedies under or by reason of this Agreement.

25.7 Governing Law; Disputes. This Agreement shall be construed under and be governed by the laws of the State of Florida, excluding the conflicts of laws provisions thereof.

25.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

25.9 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of the Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, or enforceable.

25.10 No Waiver. No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder shall constitute a waiver of any party's right to demand strict compliance with the terms of this Agreement.

25.11 Intentionally Deleted.

25.12 Expenses. Each party to this Agreement shall bear its own expenses in connection with the negotiation, preparation and execution hereof.

25.13 Sale of the Residential Units; the Declaration; and Shared Costs.

(a) Sale of Residential Units. Owner's offering, marketing for sale and sale of fee interests in the Residential Units and/or the Voluntary Rental Program and Rental Agreements shall be made in accordance with all federal, state and local laws, rules and regulations, including, without limitation, securities laws. Owner shall use the Brand Names in connection therewith solely as set forth in Section 20 hereof.

(b) The Declaration. The Hotel shall be subject to the Declaration which shall (i) set forth the rights and obligations of, among others, the Residential Units, the Hotel Units and the owners and occupants thereof, and (ii) provide that the owner of the Hotel Units may impose assessments against owners of the Condominium Units with respect to the Shared Components of the Hotel Units and collect the same as Shared Costs. The draft Declaration is attached hereto as Exhibit B. The Declaration, as approved by Operator pursuant to this Section, shall be recorded in the Public Records of Broward County, Florida. Any change to the draft Declaration approved by Operator pursuant to this Section prior to the initial recordation thereof which would materially affect this Agreement, the Voluntary Rental Program, the Rental Agreement or Operator's rights or obligations hereunder or thereunder, will require Operator's prior written consent which may not be unreasonably withheld or delayed. From and after the initial recordation of the Declaration in accordance with the preceding sentence, Owner shall not to the best of its knowledge take any action, or exercise any rights, under the recorded Declaration (including, without limitation, any amendments thereto) which would materially affect this Agreement, the Voluntary Rental Program, the Rental Agreement or Operator's rights or obligations hereunder or thereunder, unless Owner shall have obtained Operator's prior written consent which may not be unreasonably withheld or delayed.

(c) Shared Costs. In accordance with the provisions of Article 12 of the Declaration, Operator shall use reasonable commercial efforts to bill, assess and collect all Shared Costs from the owners of Condominium Units. All amounts collected by Operator pursuant to this subsection (c) shall be used by Operator when received by it to offset the cost of managing, maintaining, repairing, insuring, replacing, improving and operating the Shared Components of the Hotel Units in accordance with this Agreement and the Declaration. The failure of Operator to receive in a timely manner from owners of Condominium Units any or all of the billed and assessed Shared Costs shall not relieve the Owner from funding in a timely manner any amounts required to be funded by Owner under this Agreement (including,

without limitation, any amounts needed for purposes of operating, maintaining, repairing, replacing and/or refurbishing the Shared Components of the Hotel Units in accordance with the Operator Standards). In the event that Owner funds amounts hereunder as provided in the immediately preceding sentence, then Owner shall be reimbursed for such amounts when and if Operator receives the delinquent payments from the owners of Condominium Units (voluntarily or through collection and/or foreclosure actions). The assessment, billing and collection of the Shared Costs shall be the responsibility of Operator and all costs incurred by Operator in connection with the assessment, billing and collection of the Shared Costs or with respect to the foreclosure of the lien(s) securing the payment therefor will be an Operating Expense hereunder. In furtherance of the foregoing, Owner hereby appoints and designates Operator, as Owner's designee, to perform all the foregoing functions on Owner's behalf as if Operator were the "Hotel Unit Owner" under the Declaration.

(d) Condominium Management Services. Until such time as Owner relinquishes control of the Condominium Association in accordance with the Declaration and Florida Statutes Chapter 718, Operator shall perform the Condominium Management Services pursuant to a management contract to be entered into with the Condominium Association for additional consideration on such terms as are prevailing in the market for such condominium management services.

25.14 Irrevocability of Agreement. Owner and Operator each acknowledge that they are entering into this Agreement in reliance on the long term nature of this Agreement, and further acknowledge that the rights, duties, powers and authority of each of the parties hereto, are intended to be non-terminable throughout the Term, except in accordance with the express provisions of this Agreement or, where appropriate, as a remedy for the occurrence of a Default. It is agreed that neither party will achieve the benefits intended to be achieved if either party has any continuing right or power to terminate this Agreement, or the agency hereby created, except in accordance with the express provisions of this Agreement. Accordingly, both Owner and Operator hereby, as a substantial inducement to the other to enter into this Agreement, as an inducement to Operator to invest the skill, time, expertise and customer relationships necessary to achieve the long term benefits herein contemplated, and as an inducement to Owner to ensure the full and unrestrained best efforts of Operator in the management and operation of the Hotel in accordance with the provisions of this Agreement, hereby irrevocably waive and relinquish any right, power or authority existing at law or in equity, except in accordance with the express provisions of this Agreement. The parties further hereby acknowledge that any breach of the provisions of this Section, by either party will cause irreparable and permanent damage to the other party, not fully or substantially compensable by money damages.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above set forth.

OPERATOR:

Sheraton Operating Corporation, a Delaware corporation

By: 

Name: STEVEN R. GOLDMAN

Title: EXECUTIVE VICE PRESIDENT

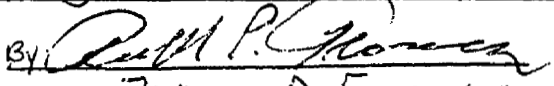
OWNER:

Luxury Resorts International, Inc., a Florida corporation

By: 

Name: DANIEL MELK

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By: 
Name: RANDALL P. FIORENZA

Title: VICE PRESIDENT

Title: President

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EXHIBIT A	SITE LEGAL DESCRIPTION
EXHIBIT B	FORM OF DECLARATION
EXHIBIT C	CENTRALIZED SERVICES
EXHIBIT D	INSURANCE
EXHIBIT E	LIENS AND ENCUMBRANCES
EXHIBIT F	OWNER'S NAMES LOGO
EXHIBIT G	RENTAL AGREEMENT TERM SHEET

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EXHIBIT A
TO
HOTEL MANAGEMENT AGREEMENT

SITE

Lot 1, a resubdivision of Block "E" BIRCH OCEAN FRONT SUBDIVISION No. 2,
according to the Plat thereof, recorded in Plat Book 26, Page 33, of the Public Records of
Broward County, Florida.

* *

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EXHIBIT B
TO
HOTEL MANAGEMENT AGREEMENT
FORM OF DECLARATION

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EXHIBIT C

TO

HOTEL MANAGEMENT AGREEMENT

CENTRALIZED SERVICES

DESCRIPTION OF SERVICES; CURRENT FEES AND CHARGES

The services described in this Exhibit and the associated fees and charges are those provided and prevailing as of the date of this Agreement. All such services and the associated fees and charges are subject to modification in accordance with the provisions of Section 4.4 of the attached Agreement:

<i>I. RESERVATIONS</i>		<i>U.S. and Canadian Properties</i>
Reservations Fee Structure	Room Revenue	.8% GRR
	Per Room Fees	\$8.65 per month
	CRO Bookings	\$3.00 per gross booking
	GDS/Internet Bookings	\$6.00 per net booking
MARS	Per call/sell	\$1.69 -\$2.79 per call (reduces based on volume), plus \$2.00 per gross booking, plus applicable connect/transfer charges.
Regional Reservation Center (OPTIONAL, where available)	Per call/sell	\$1.55 per call, plus \$2.00 per gross booking

Reservations Fee. The Reservations Fee funds reservations and the technology support for the central and third-party reservation systems. Properties are also charged, on a per usage basis, for reservations system training and customer service and retroactive commission complaints handled by Starwood's central customer service departments. All reservations for the Hotel comprise "gross bookings". "Net bookings" consist of those gross bookings which have not been cancelled over the same GDS system and/or third party internet site through which they were made.

MARS. Using the MARS program, properties send callers, who originally dial the property directly, to a reservations facility when the property is unable to answer the call. Canadian properties are charged an international telecom surcharge.

Regional Reservation Centers. Regional reservation centers are an extension of the MARS program, where a property sends 100% of its reservations calls to a reservations facility.

<i>II. FREQUENCY PROGRAMS</i>		<i>U.S. and Canadian Properties</i>
Starwood Preferred Guest Program	Transaction based	5.0% of qualified charges; 2.0% of qualified charges on first stay when enrolled by Hotel
Airline Programs	Transaction based	Based on quantity

Frequent Guest Program. Properties are charged a 5.0% assessment on qualified charges, except for first stay when guest is enrolled in Program at the Hotel, in which case assessment is 2% of qualified charges. Qualified charges are all folio charges excluding taxes, gratuities and service charges. Guests may participate in either the Starwood frequent guest program or an airline program, but not both for any particular hotel stay (except in connection with special promotions). Properties are also charged, on a per usage basis, for training, program materials, program audits, bonus points and customer service complaints and retroactive Starpoint claims handled by Starwood's central customer service departments. Properties are reimbursed for Hotel stay awards consumed at the property, on a sliding scale based on annual budgeted ADR. When occupancy exceed 90% for a given night, reimbursement will equal ADR for that night.

Airline Programs. Airline transaction charges will vary by airline. The charge will consist of the actual airline fee, applicable taxes (if any) and a small administrative fee. The charges generally range from \$7.50 to \$14.50 per stay, depending on airline. Properties are also charged, on a per usage basis, for retroactive mileage claims.

<i>III. SALES & MARKETING</i>		<i>U.S. and Canadian Properties</i>
Sales & Marketing Funding	All Properties	2.0% of GRR
Starwood Preferred Planner Program	Transaction based	1 Starpoint per \$3.00 of eligible charges; Maximum cost per meeting is \$300 (except special promotions)
Team HOT	Transaction based	3% of Room Revenue on Group and Individual Travel Referred Booking. 3% of F&B and Meeting Room Rental Revenue on Catering Referred Bookings. One quarter is paid at time of booking, remainder is paid based on actual consumed revenue.

Sales and Marketing Funding. Each property is assessed a Marketing Fee as indicated, a portion of which is allocated to global sales offices and functions.

Starwood Preferred Planner Program. Rewards meeting planners with Starwood Preferred Guest Starpoints based on group spend (whether master billed or individually paid). Maximum cost of \$300 per meeting (for cap of 20,000 points), exclusive of special bonus promotions.

Team HOT. This worldwide cross-selling program pays commissions to Sales & Catering Operators at other Starwood managed properties for referred business.

IV. HUMAN RESOURCES		<i>U.S. and Canadian Properties</i>
Group Benefits Administration	Hotel Specific	\$16 per month per eligible employee
Payroll Processing	Hotel Specific	Per check charge

Group Benefits Administration Costs. Starwood Human Resources administrates and contracts with third parties for administration of employee benefit plans including group insurance, accidental death and dismemberment, travel accident, life, long term disability and an employee assistance program. Administration of these plans includes processing enrollments, negotiating and maintaining vendor relationships, and supporting a call center. Currently, hotels are assessed \$16 per month per eligible, non-union employee for these services.

Payroll Processing. Provides centralized payroll processing on a per check fee basis. Properties provide check printing equipment.

V. INFORMATION TECHNOLOGY		<i>U.S. and Canadian Properties</i>
Integrated Property System Maintenance	All Properties	\$200 per month
SAP Accounting System Maintenance	All Properties	\$985 per month
Technology Management Service	All Properties	\$30 per room annually
Revenue Management	All Properties	
--Topline Revenue Management System Support		\$3.00 per room per month (estimate)
--Central Revenue Management Support		\$3.65 per room per month
Network Services Fee	All Properties	\$100-\$850 per month depending on network services used
Network Access Fee	All Properties	Vendor determined based on circuit cost and bandwidth used.
Oracle Platform Fee	All Properties	variable based on property size
Portal Access Fee	All Properties	\$50 per room per annually (estimate)

Integrated Property System. Starwood will centrally support the Integrated Property System (“IPS”). Starwood is currently billing hotels \$200 per month to offset the expense of maintaining the Starwood proprietary IPS interface to the Property Management System and the ongoing costs of enhancements to this product.

SAP Accounting System. SAP is Starwood’s standard accounting system. Costs to maintain and operate this system will be billed to the hotels at \$985 per month. The per-month fee includes the Help Desk, all hardware and software maintenance, and Data Center operations.

Technology Management Service. Starwood has implemented a team of Area Operators of Technology. Each hotel will have access to this team for technology management services. The cost to the hotel is \$30 per room annually.

Revenue Management. Monthly fees fund a team of revenue management specialists who work with and support the hotel revenue teams, as well as software system support.

Network Services. Fee funds certain support for SAP communications, Email, Internet and IPS connection. The costs are based upon the services each hotel accesses.

Network Access. Fee for network communication costs between the hotels and outside communication vendor. Communications vendor will bill the property directly. Charges will be based on actual costs and the circuit size of communication from your property.

Oracle Platform Fee. This license allows a property to access internal applications that are built using Oracle products. Fee consists of a one-time license fee and an annual support fee, which vary based on number of rooms.

Portal Access. \$50 per room per year (estimate).

Other Technology. Based on property requirements, Starwood can provide a variety of project consulting and systems support services for a fee. This may be provided in conjunction with outside consultants and vendors.

<i>VI. INTERNAL AUDITS</i>		<i>U.S. and Canadian Properties</i>
Internal Audit Preparation	All Properties	variable based on property size

Internal Audit Preparation. Each hotel is audited by internal audit team on a one to three year basis. Fee varies based on size of hotel. Property is also responsible for travel and related costs.

<i>VII. SIX SIGMA</i>		<i>U.S. and Canadian Properties</i>
Six Sigma	All Properties	variable

DRG

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Six Sigma. "Six Sigma" is an approach to improving business processes that applies specific tools, training and resources to eliminating the underlying causes of variability in processes as experienced by our customers and thereby increase revenue and reduce cost. To be rolled out in 2001. Estimated cost per property will be approximately \$20,000 - \$30,000 for training and materials in 2001. In addition, approximately \$10,000-\$15,000 for development costs will become due upon completion of training (late 2001/early 2002),

<i>VIII. REIMBURSABLE EXPENSES</i>		<i>U.S. and Canadian Properties</i>
	All Properties	variable

Reimbursable Expenses. On an as-needed basis, properties pay directly, or reimburse Operator and its Affiliates, for specified charges and fees, which may include, without limitation, travel expenses of regional and area personnel supervising the property, Website design and consulting, training courses, brand audits (mystery shopping services), central accounting, treasury services, property directories and other brand collateral, third-party market research, guest and employee satisfaction surveys, employee handbooks, and property photography. In addition, properties shall pay for their allocated share of all costs and charges payable or incurred to third parties including the following: (i) amounts owed or paid to travel consortia groups, electronic distribution channels (including the Global Distribution Systems), Internet-booking services, and providers of network communications services in connection with processing reservations for the Hotel; (ii) amounts owed or paid to centralized payers of travel agents' commissions as Operator or its Affiliates may contract with for the processing of such commissions earned for reservations consumed at the Hotel; (iii) charges for the cost of preparing, printing and distributing operations manuals, accounting bulletins, employee handbooks, forms and similar publications; (iv) the costs of printing employee handbooks and forms, and (v) costs incurred by Hotel Employee in attending management conferences and seminars organized by the corporate divisions of Operator and its Affiliates.

EXHIBIT D
TO
HOTEL MANAGEMENT AGREEMENT
INSURANCE

A. LIABILITY INSURANCE

At all times during the Term, at Owner's cost and expense, Operator shall maintain (a) commercial general liability insurance including products and completed operations, bodily injury and property damage liability, liquor liability, innkeepers' liability, garage keepers liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Hotel, or any elevator or escalator therein, and on, in, or about the adjoining streets and passageways thereof, or otherwise, arising under this Agreement; (b) umbrella and excess liability insurance; (c) business automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles; (d) appropriate workers' compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the state of in which the Hotel is located for all Hotel Employee; and (e) such other insurance (including fidelity/crime coverage and employment practices liability) against other insurable risks not covered under subsections (a), (b), (c) and (d) which, at the time, are commonly insured against by owners of hotel premises in the Hotel's market area, with due regard being or to be given to the then existing circumstances and to the type, construction, design, use and occupancy of the Hotel. The following is a summary of the minimum liability insurance requirements as of the Effective Date:

Commercial General Liability

\$1,000,000 per occurrence

\$1,000,000 personal & advertising injury

\$2,000,000 general aggregate per location

\$2,000,000 products-completed operations aggregate

Automobile Liability

\$1,000,000 per accident (BI & PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

Umbrella & Excess Liability

\$100,000,000 per occurrence & aggregate per location

Workers' Compensation

Statutory

Employers Liability

\$1,000,000 each accident-bodily injury by accident

\$1,000,000 policy limit-bodily injury by disease



\$1,000,000 each employee-bodily injury by disease

Fidelity/Crime

\$5,000,000 each loss

Employment Practices Liability

\$5,000,000 each insured event

\$5,000,000 aggregate per policy period

B. PROPERTY INSURANCE

1. At all times during the Term, at Owner's cost and expense, Operator shall keep the Hotel building and its contents, insured for the benefit of the Owner, Operator and the applicable Guest Room Unit owner (if any): (a) against "all risks" for the full replacement value of the Hotel including earthquake and flood in such amounts and at premium levels reasonably attainable based upon prevailing insurance market conditions; (b) on equipment for the supply or control of heat, light, power, hot water, cold water, gas, refrigeration, or air conditioning against direct or consequential loss or damage, as customarily covered under a Boiler and Machinery policy with a comprehensive definition of insured equipment, in the amount of at least five million dollars (\$5,000,000) or amounts as the Owner or Operator may from time to time reasonably require; (c) for such other risks (including loss to fine arts, accounts receivable, valuable papers and records, electronic media and records and shipments in transit) that, at the time, are commonly insured against by owners of hotel premises in the Hotel's market area, with due regard being or to be given to the then existing circumstances and to the type, construction, design, use and occupancy of the Hotel; and (d) against Business Interruption and Extra Expense resulting from loss or damage from the hazards specified above, to owned or non-owned property, which prevents normal operations from continuing; such insurance shall be written on an Actual Loss Sustained basis in an amount equal to at least one (1) year's expected net income before income tax (calculated according to GAAP), plus continuing normal operating expenses, including the Base Fee and Incentive Fee, the Centralized Services Charges, salaries and related payroll items and all other Reimbursable Expenses, that necessarily continue, notwithstanding the business interruption; such insurance shall also provide Extended Period of Indemnity provisions for payment of loss until normal operations resume, but in any event for a period of not less than one hundred eighty (180) days after business operations have resumed.

"Full replacement value," as used herein, means the cost of repairing, replacing, or reinstating, including demolishing, any item of property, with materials of like kind and quality in compliance with, (and without, an exclusion pertaining to application of), any law or building ordinance regulating repair or construction at the time of loss and without deduction for physical, accounting, or any other depreciation, in an amount sufficient to meet the requirements of any applicable co-insurance clause and to prevent the Owner from being a co-insurer.

EXHIBIT E
TO
HOTEL MANAGEMENT AGREEMENT
LIENS AND ENCUMBRANCES

Liens and encumbrances existing as of the date of execution of this Agreement:

1. Land loan extended by Ocean Bank in the maximum principal amount of \$4,780,000 secured by a first mortgage on the Site.

D. R. B.

EXHIBIT F
TO
HOTEL MANAGEMENT AGREEMENT

OWNER'S NAMES LOGO

THE  ATLANTIC

DR

EXHIBIT G

TO

HOTEL MANAGEMENT AGREEMENT

RENTAL AGREEMENT TERM SHEET

1. Parties: The only parties to the Rental Agreements will be Luxury Resorts International, Inc. ("Owner") and each residential unit owner desiring to join the Voluntary Rental Program ("Guest Room Owner").

2. Operator: Operator will perform Owner's functions under the Rental Agreements pursuant to the authority granted to Operator under Section 5.2 of the Management Agreement. Guest Room Owners to acknowledge in the Rental Agreements that Owner has engaged Operator to manage the Hotel Unit and the Rental Agreements on behalf of Owner as a Luxury Collection resort pursuant to a Management Agreement between Owner and Operator, but that there is no guarantee that the Management Agreement will remain in place or that the Hotel Unit or the Rental Agreements will be managed as a Luxury Collection resort for the duration of the Rental Agreements.

3. Term:

(a) The initial term of the Rental Agreements will be a minimum of 2 years, with consecutive automatic renewal periods of a minimum of 2 years each unless notice of non-renewal is delivered by either Owner or Guest Room Owner at least 6 months prior to the expiration of the then-current term.

(b) The commencement and termination of the Rental Agreements will be coordinated for administrative convenience but should be staggered to control excessive loss of room inventory at any point in time. The initial term of the Rental Agreements in place at opening should commence on the Opening Date (as described in the Technical Assistance Agreement). This would require that, for purposes of the Rental Agreements, the commencement date of the initial term would be such date as designated in a notice by Owner to the Guest Room Owners.

4. Rental Program Options And Rental Procedures:

(a) Rental Program Options - Various rental program options will be offered by Owner as follows:

	Rental Program Option #1	Rental Program Option #2	Rental Program Option #3
Total Annual Owner Occupancy Period			
In-Season* Annual Owner Occupancy Period			
Off-Season* Annual Owner Occupancy Period			

Blackout Periods			
Maximum Advance Notice For Guest Room Owner Reservations			
Minimum Advance Notice For Guest Room Owner Reservations			
Net Rental Income Split	___% to Owner; ___% to Guest Room Owner	___% to Owner; ___% to Guest Room Owner	___% to Owner; ___% to Guest Room Owner
Reservation Rental Priority Among Rental Program Options			
Maximum Number of Units Permitted in Rental Program Option			

*Notes to Rental Program Options Chart:

"In-Season" is defined as _____.

"Off-Season" is defined as _____.

"Blackout Periods" include: _____.

No guaranteed leaseback program will be offered to Guest Room Owners in this project.

"Net Rental Income" is defined as the rental revenue of the Guest Room Unit based on the room rate only (and excluding other charges to guests, sales and occupancy taxes) less the "service fee".

There will be no guarantee that the Guest Room Unit will be available during Owner Occupancy Periods, regardless of whether such reservation is requested within the period between the maximum and minimum advance notice for Guest Room Owner reservations. All reservations by Guest Room Owners will be subject to confirmation on a space available basis. Any conflicts in reservations of Guest Room Units will be resolved by Owner in its discretion.

(b) Charges to Guest Room Owners during Owner Occupancy Periods – The following charges will be collected from Guest Room Owners (or their permitted guests) at checkout after each Owner Occupancy Period through credit cards:

- i) Telephone charges – Local, domestic and international long distance charges if use of Hotel's telephone system during Owner Occupancy Periods. Such charges will be the same as the ones charged to Hotel guests for such use. Guest Room Owners will be permitted to install in their Guest Room Units a private line for Guest Room Owners' use while in residency, so long as such phone is removed after such Owner Occupancy Periods and the phone jack/outlet is secured from use by Hotel guests.
- ii) Hotel services – A disclosure will be included to the effect that Hotel charges/fees in connection with Guest Room Owner's use of the following services during Owner Occupancy

Periods) will be charged to Guest Room Owner's (or their permitted guest's) credit card at checkout: pay per view, minibar, room service, internet (if any), food and beverage, business center services, spa/fitness services, use of meeting space (if any), use of cabanas (if any), dry cleaning services, parking valet services, and other services offered by the Hotel.

- iii) Nightly fee – A nightly fee for mandatory housekeeping services during Owner Occupancy Periods will be charged to Guest Room Owner's (or their permitted guest's) credit card at checkout. The initial nightly fee per type of Guest Room Unit will be set by Owner and Operator and may be included in the Rental Agreement, so long as the same can be increased unilaterally by Owner from time to time up to [10% ?] in any year.
 - iv) Departure cleaning – A departure cleaning fee after Owner Occupancy Periods may be charged to Guest Room Owner's (or their permitted guest's) credit card at checkout, if the Guest Room Unit is left in an unrentable condition. The initial departure cleaning fee per type of Guest Room Unit will be set by Owner and Operator and may be included in the Rental Agreement, so long as the same can be increased unilaterally by Owner from time to time.
- (c) Advance Reservations by Operator – There will be no limitation on Owner ability to reserve Guest Room Units for Hotel guests in advance, subject only to any confirmed reservations by Guest Room Owners (or Guest Room Owners' permitted guests) during Owner Occupancy Periods. Any termination, cancellation or expiration of the Rental Agreements and any Guest Room Unit sale (voluntary or involuntary) will be subject to all confirmed reservations made by Owner. However, Owner will have the opportunity to change those reservations to other Guest Room Units in the rental program.
- (d) Unit Rotation Reservation Process – A disclosure to Guest Room Owners of the Guest Room Unit rotation system and priorities (amongst Guest Room Units within a rental program, and amongst rental programs) for rental of Guest Room Units to be used by Owner should be included.

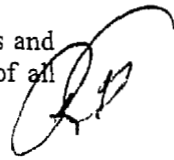
5. Reporting and Payment to Guest Room Owners: Monthly reporting and monthly rental payments will be made to Guest Room Owners showing, for the previous month, all gross rental income collected with respect to the Guest Room Unit, the "service fee" deduction, the applicable net rental income split between Owner and Guest Room Owner, all other fees and charges deducted from Guest Room Owner's portion of the net rental income split as permitted by the Rental Agreement, and the payment to the Guest Room Owner (if any) or the payment due from the Guest Room Owner to cover any expenses with respect to the Guest Room Unit in excess of Guest Room Owner's portion of the net rental income split.

Guest Room Owners will be provided with a rack room rate schedule for the Guest Room Units (i.e. a rate card) upon request. Operator may include in such schedule/card any disclaimer it deems appropriate.

If the cost of such reporting, accounting, bookkeeping, rate card requests and payments will be paid by the Guest Room Owners as a deduction from Guest Room Owner's portion of the net rental income split, the Rental Agreement will so provide. If such costs are intended to be covered from the "service fee", consider such costs when determining the amount of the service fee.

6. Service Fee: The "service fee" will be based on gross rental income, defined as the rental revenue of the Guest Room Unit based on the room rate only and excluding other charges to guests, sales and occupancy taxes. The percentage amount of the "service fee" will be determined by Owner and Operator and will be set forth in the Rental Agreement. The "service fee" should be an amount sufficient to provide for payment of, at least, the fees and charges payable to the Operator by Owner pursuant to the Management Agreement (including, without limitation, the Base Fee, the Centralized Services Charges, travel agent, third party and credit card commissions and charges, and all reimbursable amounts to Operator).

In addition, the "service fee" should also be an amount sufficient to provide for payments of all costs and expenses with respect to the administration of the Rental Agreements (including the performance of all

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reporting, inspection, accounting, bookkeeping, rate card provision, collection services and payments thereunder, clerical/office expenses and lost keys), and all costs and expenses with respect to the maintenance, cleaning, guest housekeeping, repair, replacement, refurbishment and insurance of the Guest Room Units (including the maintenance of a Guest Room Unit FF&E reserve, and provision of Guest Room Unit operating supplies/furnishings), if such items are not to be paid by the Guest Room Owners under the Rental Agreements through deductions from the Guest Room Owners' split of the net rental income.

The intention of Owner and Operator is that all costs, expenses and fees with respect to the guest rooms and the Rental Agreements will be Operating Expenses of the Hotel under the Rental Agreement and ultimately payable out of Owner's funds thereunder, with any amounts collected from Guest Room Owners under the Rental Agreements to be used to offset such Operating Expenses.

7. Guest Room Unit Expenses: Owner should have the ability to pay all of the following Guest Room Unit expenditures on behalf of the Guest Room Owners by (i) deducting amounts for the following expenditures from the portion of the net rental income otherwise payable to the Guest Room Owners, and (ii) to the extent of insufficient rental funds, to bill the Guest Room Owners for the same and/or advance funds on Guest Room Owners' behalf to be recovered from first available future rental funds:

- (a) Assessments to Condominium Association - All common expense assessments due and payable to the Condominium Association under the Declaration, which will include the cost of all utility services (except for telephone service) to the Residential Units.
- (b) Shared Costs to Owner – All Shared Cost assessments due and payable to the Owner as the "Hotel Unit Owner" under the Declaration.
- (c) FF&E – All Guest Room Units that will join the Voluntary Rental Program shall be required to purchase a "Furniture Package" from the Owner. The Furniture Package will be determined by the Owner and Operator pursuant to the Technical Assistance Agreement. Guest Room Owners will be prohibited from altering their Guest Room Unit or the furnishing therein.
 - i) FF&E Reserve - *[Payments into FF&E Reserve may be included as a part of the "service fee" for purposes of creating one reserve owned by the Owner for all FF&E/capital expenditures for Guest Room Units, or as a deduction from the expenditures from the portion of the net rental income otherwise payable to the Guest Room Owners¹, as agreed by Operator and Owner.]* The Guest Room Unit FF&E Reserve contribution will be a percentage of gross rental revenue to be agreed by the Owner and Operator, but should be no less than required pursuant to the Management Agreement.

Expenditures from a Guest Room Unit FF&E reserve (if established under the Rental Agreement as a reserve for each Guest Room Owner from such owner's portion of the net rental income) will be without advance notice or consent of the Guest Room Owners, except for expenditures which exceed *[\$1,000]* per item of repair, replacement, upgrade or refurbishing.

- ii) Capital Expenditures In Excess of FF&E Reserve – Capital Expenditures for Guest Room Units in excess of amounts in the FF&E Reserve should be performed at Guest Room Owner's cost (from rental revenues or billed to Guest Room Owners if in excess of rental revenues) without advance notice or consent of the Guest Room Owners, except for

¹ If the FF&E Reserve for units is to be funded in this manner, then it would seem appropriate to maintain one FF&E Reserve per unit the funds in which will be the property of the Guest Room Owner along with an accounting for expenditures therefrom.

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[Signature]

expenditures which exceed *[\$1,000]* per item of repair, replacement, upgrade or refurbishing.

- (d) Insurance – All Guest Room Units must be covered by liability, property and contents insurance in accordance with the requirements of the Management Agreement. Such insurance coverage should be obtained by either Owner or Operator (whomever will obtain such insurance with respect to the Hotel Unit) through its blanket policy at Guest Room Owners' cost.
- (e) Furnishings Package - All Guest Room Units shall be required to purchase a "Furnishings Package" from the Owner containing all Guest Room Unit operating supplies and equipment. The Furnishings Package will be determined by the Owner and Operator. Guest Room Owners will be prohibited from altering or removing items from the Furnishings Package from the Guest Room Units.

All replacements, repair and maintenance of the items in the Furnishings Package will be at Guest Room Owner's cost and expense. No consent of Guest Room Owner or advance notice should be required for such expenditures, except for expenditures which exceed *[\$1,000]* per item of repair, replacement, or maintenance. Consider maintaining a separate reserve under the Rental Agreement funded by the Guest Room Owners for payment of such maintenance and replacement.


- (f) Maintenance/Repair - With respect to all maintenance and repair items that are usually not funded out of the FF&E reserves, the same will be performed at Guest Room Owner's cost. If a fee for such services is to be stated in the Rental Agreement, such amounts should be set determined by Owner and Operator and should be subject to increase unilaterally by Owner from time to time.
- (g) Annual Deep Cleaning – At least an annual deep cleaning of the Guest Room Unit and all furniture and furnishings therein will be performed, at Guest Room Unit Owner's cost and expense. More deep cleaning of the Guest Room Unit may be required on a case by case basis at Guest Room Unit Owner's cost and expense. The initial annual deep cleaning fee per type of Guest Room Unit will be set by Owner and Operator and may be included in the Rental Agreement, so long as the same can be increased unilaterally by Owner from time to time.

As to items that will be paid on Guest Room Owner's behalf, the Rental Agreements should include a statement that Owner will pay the same only to the extent of available funds from the Guest Room Owner and rental revenues from the Guest Room Unit. In addition, the ultimate responsibility for payment will remain with the Guest Room Owner, even though Owner will have the ability to advance the sums and deduct them from future rentals.

As to the payments for Guest Room Unit mortgage debt and Guest Room Unit real property taxes, and as to the payments of other items that will not be paid on Guest Room Owners' behalf under the Rental Agreements, the Rental Agreements will include a covenant from the Guest Room Owners to timely pay the same and to provide Owner with evidence of such timely payments. The Rental Agreements should provide for all of the following remedies for failure of Guest Room Owners to timely pay the same: (i) suspension of rental of the Guest Room Unit; (ii) termination of the Rental Agreement, (iii) ability to pay the same on Guest Room Owner's behalf and recover the same from future rental revenues, and (iv) suspension of Guest Room Owner Occupancy rights.

- 8. Assignment: No assignment of the Rental Agreement should be permitted by the Guest Room Owners, except in connection with the sale of the Guest Room Unit. Assignments by Owner are addressed in the Management Agreement.
- 9. Rental by Guest Room Owner: Guest Room Owners will be prohibited in the Rental Agreements from renting their Guest Room Unit through a third party other than Owner. Failure to comply with this requirement will result in *[55%]* of the rental revenues collected by the Guest Room Owner for such third party rental to be payable to the Owner, in addition to any other remedies Owner may have for breach.

10. Complimentary Use of Unit: A minimum of 10 days per year per Guest Room Unit will be made available to Owner (for use by Operator under the Management Agreement) for complimentary use not to be limited to promotion of the rental program. If any blackout dates for complimentary uses are to be included, the same must be acceptable to Operator.
11. Storage of Personal Property: If personal storage lockers or spaces for personal belonging of Guest Room Owner's while not in occupancy, a copy of the key to any such storage lockers must be delivered to Owner, and Owner must have the right to inspect the same for health and safety purposes.
12. Sale of Unit: The sale of a Guest Room Unit should not terminate the Rental Agreement. A purchaser would purchase the Guest Room Unit subject to the terms of the Rental Agreement, unless otherwise terminated. Owner should have the right to terminate immediately upon the occurrence of a sale if the successor owner does not expressly assume the Rental Agreement and cure any deficiencies/defaults of the prior Guest Room Owner. All Guest Room Unit reserves should remain in place after a sale. No showing of the Guest Room Unit will be permitted without the prior consent of Owner and none will be permitted while a guest is in occupancy.
13. Default by Guest Room Owner: Breach of any covenant, representation or term of the Rental Agreement by a Guest Room Owner will entitle Owner to all of the following remedies: (i) suspension of rental of the Unit; (ii) termination of the Rental Agreement, (iii) ability to advance delinquent amounts relating to Guest Room Unit expenses on Guest Room Owner's behalf and recover the same from future rental revenues, and (iv) suspension of Owner Occupancy Periods.
14. Right of Set-Off and Indemnification: Operator will not be liable in connection with any indemnity to Guest Room Owners by the Owner.
15. Non-disturbance: Reserve Owner's right to require from any mortgagee of a Guest Room Unit to deliver a non-disturbance agreement with respect to the Rental Agreement.
16. Unit Locks: Guest Room Unit Owners will be required to install such locks as are determined by Owner.
17. Guest Room Owner's Acknowledgments – A section in bold containing various acknowledgements by the Guest Room Owners should be included with respect to: (a) no guaranteed return on the rental of the Guest Room Unit, and (b) securities exemption matters (i.e. sales/marketing/investment representations, disclosures and procedures, execution of Rental Agreements after closing, optional nature of rental program, no pooling statement, and no economic or tax representations or emphasis).


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This Instrument prepared by, or under the supervision of
(and after recording, return to):

Gary A. Saul, Esq.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131

(Reserved for Clerk of Court)

EXHIBIT "A"

**DECLARATION
OF
THE ATLANTIC HOTEL CONDOMINIUM**

Luxury Resorts International, Inc., a Florida corporation, hereby declares:

1. Introduction and Submission.
 - 1.1 The Realty. The Developer owns fee title to certain real property located in Miami-Dade County, Florida, as more particularly described in **Exhibit "1"** annexed hereto (the "Realty").
 - 1.2 Submission Statement. The Developer hereby submits the Realty and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Realty - but excluding all public or private (e.g. cable television) utility installations therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Realty, shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
 - 1.3 Name. The name by which this condominium is to be identified is **THE ATLANTIC HOTEL CONDOMINIUM** (hereinafter called the "Condominium").
2. Definitions. The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
 - 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
 - 2.2 "Allocated Interests" shall have the meaning ascribed to it in Section 5.1 below.
 - 2.3 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
 - 2.4 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
 - 2.5 "Association" or "Condominium Association" means THE ATLANTIC HOTEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the sole entity responsible for the operation of the Common Elements of the Condominium.



Exhibit "9"

- 2.6 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.7 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association. Directors must be natural persons who are 18 years of age or older. Any 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.
- 2.8 "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- 2.9 "By-Laws" mean the By-Laws of the Association, as amended from time to time.
- 2.10 "Committee" means a group of Board Members, Unit Owners or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the Association budget or to take action on behalf of the Board.
- 2.11 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units.
 - (b) An easement of support in every portion of a Unit which contributes to the support of the Building.
 - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements, if any (it being the intent, however, that all such property and installations shall be deemed Shared Components which are part of the Hotel Unit, rather than part of the Common Elements).
 - (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

The Condominium has been established in such a manner to minimize the Common Elements. Most components which are typical "common elements" of a condominium have instead been designated herein as part of the Shared Components of the Hotel Unit.

- 2.12 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) if applicable, insurance for directors and officers; (c) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association; (d) the costs and expenses of maintaining, repairing and/or replacing as necessary any landscaping located along or upon the medians adjacent to (even if beyond the legal boundaries of) the Condominium Property; and (e) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners, including, without limitation, any sums payable to the Hotel Unit Owner (as hereinafter defined).
- 2.13 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.



- 2.14 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.15 "Condominium Property" means the Realty, Improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.16 "County" means the County of Miami-Dade, State of Florida.
- 2.17 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.18 "Developer" means Luxury Resorts International, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.
- 2.19 "Dispute", for purposes of Section 18.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (ii) alter or add to a Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.
- 2.20 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.21 "First Mortgagee" means any person or entity holding a first mortgage on a Unit or Units.
- 2.22 "Hotel Unit Owner" means and refers to the owner(s) from time to time of the Hotel Unit.
- 2.23 "Hotel Unit" means and refers to Unit "HU" as identified on Exhibit "2" attached hereto, which includes the Shared Components (as hereinafter defined). References herein to "Units" or "Parcels" shall include the Hotel Unit unless the context would prohibit or it is otherwise expressly provided.
- 2.24 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property including, but not limited to, the Building.
- 2.25 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units.
- 2.26 "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

- 2.27 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.28 "Residential Unit" means and refers to each of the Units other than the Hotel Unit. References herein to "Units" or "Parcels" shall include Residential Units unless the context prohibits or it is otherwise expressly provided.
- 2.29 "Shared Components". Together, the improvements constituting the Common Elements, Residential Units, and Hotel Unit have been, or shall be, built and operated as an integrated project. Given the integration of the structure of those improvements, and notwithstanding anything to the contrary depicted on the survey/plot plan attached hereto as Exhibit "2", the following components of the improvements (the "Shared Components") shall be deemed part of the Hotel Unit, whether or not graphically depicted as such on said survey/plot plan: any and all structural components of the improvements, including, without limitation, all exterior block walls and all finishes (glass, paint, stucco etc) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; all utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators transversing the Condominium Property; and all trash rooms, trash chutes and any and all trash collection and/or disposal systems. In addition, the Shared Components include the following areas and/or facilities (together with a license for reasonable pedestrian access thereto, as determined by the Hotel Unit Owner): **[the pools and pool deck; the spa and fitness center, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit, and Cabanas, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit]**. Notwithstanding anything herein, or in any of the exhibits hereto, contained to the contrary, the Shared Components shall be deemed part of the Hotel Unit. The Hotel Unit Owner shall have the right (but not the obligation), by Supplemental Declaration executed by the Hotel Unit Owner alone, to designate additional portions of the Hotel Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Hotel Unit Owner shall have the right, from time to time, to expand, alter, relocate and or eliminate the portions of the Hotel Unit deemed Shared Components, without requiring the consent or approval of the Association or any Owner, provided that any portions withdrawn are not, in the reasonable opinion of the Hotel Unit Owner essential to the structural integrity of the Residential Units, the provision of utilities and utility services to the Residential Units, the provision of valet parking service to the Residential Unit Owners, and/or the provision of pedestrian access to and from the Residential Units and the adjoining public street. In furtherance of the foregoing, the Hotel Unit Owner also reserves the absolute right at any time, and from time to time, to construct additional facilities upon the Hotel Unit and to determine whether some shall be deemed Shared Components. It is expressly contemplated that persons other than Unit Owners shall be granted use rights in and to certain of the facilities of the Hotel Unit (such determination to be made in the sole and absolute discretion of the Hotel Unit Owner).
- 2.30 "Shared Costs" shall have the meaning given in Section 12.1 below.
- 2.31 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall be deemed to include the Residential Units and the Hotel Unit.
- 2.32 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.



3. Description of Condominium.

- 3.1 Identification of Units. The Land has constructed thereon one (1) Building which contains one hundred thirty (130) Units, consisting of one hundred twenty nine (129) Residential Units and one (1) Hotel Unit.

Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "2" attached hereto. Exhibit "2" consists of a survey of the Realty, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

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

- (a) Boundaries of Residential Units. The upper and lower boundaries of each Residential Unit, shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
- (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).
 - (iii) Interior Divisions. Except as provided in subsections 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Residential Unit.
 - (iv) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Notwithstanding the foregoing, as to walls shared by a Residential Unit and the Hotel Unit, the perimetrical boundary of the Hotel Unit at such shared wall shall be coextensive to the perimetrical boundary of the adjoining Residential Unit (so that the shared wall and all installations therein -which are deemed part of the Shared Components - shall be part of the Hotel Unit rather than the Common Elements and therefore the perimetrical boundary of the Hotel Unit shall extend to the unfinished interior surface of any walls bounding a Residential Unit).
- (b) Boundaries of Hotel Unit. The Hotel Unit shall consist of all of the Condominium Property, including, without limitation, any and all improvements now or hereafter constructed thereon, less and except only the following: (i) the Residential Units, and (ii) the portion of the

Condominium Property below elevation minus seventy feet (-70') N.G.V.D. Said portion of the Condominium Property lying below elevation minus seventy feet (-70') N.G.V.D. shall be deemed Common Elements hereunder.

- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, all of same shall be deemed part of the Shared Components, and as such, part of the Hotel Unit.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section (b) above shall control unless specifically depicted and labeled otherwise on such survey.

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

- (a) Support. Each Unit and any structure and/or improvement now or hereafter constructed shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and such other improvements constructed upon the Condominium Property.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association and Hotel Unit Owner shall have a right of access to each Unit to maintain, repair or replace any Common Element or Shared Component pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements and/or Shared Components contained in the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- (c) Encroachments. If (i) any portion of the Common Elements and/or Shared Components encroaches upon any Unit; (ii) any Unit encroaches upon any other Unit or upon any portion of the Common Elements and/or Shared Components; or (iii) any encroachment shall hereafter occur as a result of (1) construction of the Improvements; (2) settling or shifting of the Improvements; (3) any alteration or repair to the Common Elements (or the Shared Components) made by or with the consent of the Association or Developer or the Hotel Unit Owner, as appropriate; or (4) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or the Shared Components, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, for each member of the Association (and its and their guests, tenants and invitees) shall exist for (i) pedestrian traffic over, through and across such portions of the Hotel Unit as are designated by the Hotel Unit Owner and intended to provide direct pedestrian access to and from the applicable Residential Unit, and the



public right-of-way adjacent to the Condominium Property, and (ii) use and enjoyment of the Shared Components, subject to regulation as may be established from time to time by the Hotel Unit Owner and subject to the provisions of Section Error! Reference source not found. above. **Notwithstanding the foregoing, the aforesaid easement over the Hotel Unit is limited and solely for use of the named beneficiaries' obtaining access to and from their Unit and shall not be used for the provision of any services, including, without limitation, any hotel related services including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service, it being understood and agreed by all Unit Owners that any such services may only be provided by the Owner(s) of the Hotel Unit. The provisions of this section 3.3(d) may not be amended without an affirmative vote of not less than 4/5ths of all voting interests of all Unit Owners.**

- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) and the Hotel Unit Owner shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction of any and all improvements upon any portion of the Condominium Property, or any part thereof and for repair, replacement and maintenance or warranty purposes or where the Developer and/or Hotel Unit Owner, in its or their sole discretion, determines that it is required or desires to do so.
- (f) Sales Activity. For as long as there are any Units owned by the Developer and/or the Developer has any ownership interest in the Hotel Unit, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing and construction offices relating to the Condominium, to show model Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property and/or Association Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property for sale, lease or occupancy.
- (g) Roof and Window Washing Easement. An easement is hereby reserved over and across each Unit and the Limited Common Elements appurtenant thereto for the Association (and the personnel, employees and/or contractors of the Association) to stage and perform exterior window washing, exterior painting of the Building, maintenance, repair, replacement or alteration of any mechanical equipment located or accessible from the roof of the Buildings and/or other exterior repairs, replacements, alterations and/or maintenance (preventative or otherwise).
- (h) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings and/or any improvements constructed upon the Condominium Property, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property and/or the Association Property.
- (i) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for the Developer to fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 22 below.**

(j) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their intended purposes and provided further that if any such easement is to traverse the Hotel Unit, the joinder of the Hotel Unit Owner must be obtained.

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

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights

5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth on **Exhibit "3"** attached hereto (the "Allocated Interests").

5.2 Voting. Each Residential Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. The Hotel Unit shall be entitled to ____ (___) votes to be cast by its Owner, all in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of 80% of the voting interests of all Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting.

6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of

mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by in excess of 80% of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.3 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.4 By The Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (a) to permit time-share estates (which must be approved, if at all, in the manner provided in Section 6.2 above); or (b) to effect a "Material Amendment", which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.
- 6.5 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.
7. Maintenance and Repairs.
- 7.1 Units. All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, 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, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries 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, except as otherwise expressly provided to the contrary herein.

- 7.2 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Association Property shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.
- 7.3 Hotel Unit. The Hotel Unit Owner(s), from time to time, shall be responsible for the repair, replacement, improvement, maintenance, management, operation, and insurance of the Hotel Unit, which shall be performed in a commercially reasonable manner in the determination of the Owner(s) of the Hotel Unit (which determination shall be binding). In consideration of the reservation and grant of easement over the Hotel Unit, as provided in Section 3.3(d) above, each Residential Unit Owner shall be obligated for payment of the expenses incurred by the Hotel Unit Owner(s) in connection with such maintenance, repair, replacement, improvement, management, operation, and insurance, all as more particularly provided in Section 12 below.
- 7.4 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit and not any other Unit shall, to the extent not part of the Shared Components and otherwise part of the Condominium, be the responsibility of the applicable Unit Owner, individually, without regard to whether such items are included within the boundaries of the Units.

8. Additions, Alterations or Improvements by Unit Owner.

- 8.1 Consent of the Board of Directors. No Residential Unit Owner (other than the Developer) shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, or his Unit without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Residential Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Further, no alteration, addition or modification may in any manner affect the Hotel Unit or any portion of the Shared Components, without the prior written consent of the Hotel Unit Owner (which consent may be withheld in its sole discretion). Once approved by the Board of Directors, such approval may not be revoked. A Residential Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, the Hotel Unit Owner and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property, Association Property, the Hotel Unit and/or the Shared Components and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association, the Hotel Unit Owner, nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer, the Association and/or the Hotel Unit Owner arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association and Hotel Unit Owner shall not be responsible for reviewing, nor shall

its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer, the Association and the Hotel Unit Owner harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans hereunder. The foregoing provisions requiring approval shall not be applicable to the Hotel Unit and/or to any Unit owned by the Developer. The provisions of this Section 8.1 shall not be amended without an affirmative vote of 4/5ths of the total voting interests in the Condominium.

- 8.2 Improvements, Additions or Alterations by Developer or to the Hotel Unit. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 8 shall not apply to Developer-owned Units, nor to the Hotel Unit. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) expand, alter or add to all or any part of the recreational facilities. Similarly, the Hotel Unit Owner shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon the Hotel Unit (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and to expand, alter or add to all or any part of the recreational facilities contained within the Hotel Unit. Any amendment to this Declaration required by a change made pursuant to this Section 8.2 shall be adopted in accordance with Section 6, provided, however, that the exercise of any right by Developer pursuant to clause 8.2(b) above shall not be deemed a Material Amendment.

9. Operation of the Condominium by the Association; Powers and Duties.

- 9.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Common Elements and the Association Property, but not the Shared Components. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (which By-Laws and Articles are attached hereto as Exhibits "4" and "5", respectively) as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:
- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.
 - (b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
 - (c) The duty to maintain accounting records of the Association according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
 - (d) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and two-thirds of the voting interests of the Units represented at a meeting at which a quorum has been

attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.

- (e) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property.
- (f) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, unless the cost thereof exceeds \$25,000.00 in which event the acquisition shall require an affirmative vote of not less than 2/3rds of the voting interests. Real property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors alone and an affirmative vote of not less than 2/3rds of the voting interests; provided, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (g) The power to execute all documents or consents, on behalf of all Residential Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner of a Residential Unit, by acceptance of the deed to such Owner's Residential Unit, and each mortgagee of a Residential Unit, by acceptance of a lien on said Residential Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (h) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, exhibits attached hereto or otherwise, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 8.1 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Nothing herein shall be deemed to relieve the Association of its duty to exercise ordinary care in the carrying out of its responsibilities nor to deprive the Unit Owners of their right to sue the Association if it negligently or

willfully causes damage to the Unit Owners' property during the performance of the Association's duties.

- 9.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 9.4 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, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 9.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
- 9.6 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements;
 - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
10. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.
11. Collection of Assessments.
- 11.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be

avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

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

- (a) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
- (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.
- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed \$125,000.00 or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.

11.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at fifteen percent (15%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, interest thereon and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association and the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall continue for a longer period than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

Additionally, each Owner of any Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year, the Unit Owner or the Association, as appropriate, shall be

obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

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

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

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

(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.

As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, 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.

A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

11.7 Developer's Liability for Assessments. During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (a) the last day of the sixth (6th) 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 By-Laws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amount set forth in Exhibit "6" attached hereto, subject only to the occurrence of an Extraordinary Financial Event, as set forth below; and (ii) that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners and/or from income of the Association. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for four (4) additional six (6) month periods, or paying the share of Common Expenses and Assessments attributable to Units it then owns. Notwithstanding the above and as provided in Section 718.116(9)(a)(2) of the

Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning units on the date of such Extraordinary Financial Event, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this subsection, an "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

- 11.8 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 11.9 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly.
- 11.10 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.

12. Obligation for Expenses Relating to Hotel Unit.

- 12.1 Maintenance. As provided in Sections 3.3(d) and 7.3 above, the Hotel Unit Owner has granted easements with respect to certain portions of the Hotel Unit and agreed to repair, replace, improve, maintain, manage, operate, and insure the Hotel Unit, all to be done as determined and ordered by the Hotel Unit Owner, or otherwise as provided in Section 7.3. In consideration of the foregoing each Residential Unit Owner, by acceptance of a deed or other conveyance of the applicable Unit, and whether or not expressly stated, shall be deemed to agree that the costs incurred by the Hotel Unit Owner in (or reasonably allocated to) the repair, replacement, improvement, maintenance, management, operation, ad valorem tax obligations and insurance of the Shared Components, including, without reservation, the costs of operating a valet parking service, (including reasonable reserves if established by the Hotel Unit Owner and any assessments payable by the Hotel Unit Owner to the Association, the "Shared Costs") shall be paid for in part through charges (either general or special) imposed against the Residential Units in accordance with the terms hereof. No Owner may waive or otherwise escape liability for charges for the Shared Costs by non-use (whether voluntary or involuntary) of the Hotel Unit or abandonment of the right to use same. Notwithstanding anything herein contained to the contrary, the Hotel Unit Owner shall be excused and relieved from any and all maintenance, repair and/or replacement obligations with respect to the Hotel Unit to the extent that the funds necessary to perform same, to the extent the obligation of the Residential Unit Owners are not available through the charges imposed and actually collected. The Hotel Unit Owner shall have no obligation to fund and/or advance any deficit or shortfall in funds which were the obligation of the Residential Unit Owners in order to properly perform the maintenance, repair and/or replacement obligations described herein.
- 12.2 Easement. An easement is hereby reserved and created in favor of the Hotel Unit Owner, and its designees over the Condominium Property for the purpose of entering onto the Condominium Property for the performance of the maintenance, repair and replacement obligations herein described.
- 12.3 Charges to Unit Owners: Lien.
- (a) Developer, for all Units now or hereafter located within the Condominium Property, hereby covenants and agrees, and each Owner of any Residential Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Hotel Unit Owner annual charges for the operation and insurance of, and

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for payment of _____ percent (____.00%) of the Shared Costs (the "Residential Units Allocated Share"), the establishment of reasonable reserves for the replacement of the Shared Components and the furnishings and finishings thereof, capital improvement charges, special charges and all other charges hereinafter referred to or lawfully imposed by the Hotel Unit Owner in connection with the repair, replacement, improvement, maintenance, management, operation, and insurance of the Shared Components, all such charges to be fixed, established and collected from time to time as herein provided. The annual charge, capital improvement charge and special charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Residential Units and shall be a continuing lien upon the Residential Units against which each such charge is made and upon all improvements thereon, from time to time existing. Each such charge, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Residential Units at the time when the charge fell due and all subsequent Owners of that Unit until paid, except as provided in Section 12.5 below. Reference herein to charges shall be understood to include reference to any and all of said charges whether or not specifically mentioned. Each Unit, except for the Hotel Unit, shall be assessed a "proportionate share" of the Residential Units Allocated Share. The proportionate share for each Residential Unit shall be a fraction, the numerator of which is the percentage share allocated to the applicable Unit as set forth on Exhibit "3" to this Declaration, and the denominator of which is the aggregate of all percentage shares allocated to all Residential Units, all as set forth on Exhibit "3" to this Declaration.

- (b) In addition to the regular and capital improvement charges which are or may be levied hereunder, the Hotel Unit Owner shall have the right to collect reasonable reserves for the replacement of the Shared Components and the furnishings and finishings thereof and to levy special charges against an Owner(s) to the exclusion of other Owners for the repair or replacement of damage to any portion of the Hotel Unit (including, without limitation, improvements, furnishings and finishings therein) caused by the misuse, negligence or other action or inaction of an Owner or his guests, tenants or invitees. Any such special charge shall be subject to all of the applicable provisions of this Section including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special charge levied hereunder shall be due within the time specified by the Hotel Unit Owner in the action imposing such charge. The annual regular charges provided for in this Section shall commence on the first day of the month next following the recordation of this Declaration and shall be applicable through December 31 of such year. Each subsequent annual charge shall be imposed for the year beginning January 1 and ending December 31. The annual charges shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Hotel Unit Owner (absent which determination they shall be payable monthly). The charge amount (and applicable installments) may be changed at any time by the Hotel Unit Owner from that originally stipulated or from any other charge that is in the future adopted by the Hotel Unit Owner. The original charge for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, at any appropriate time during the year), but the amount of any revised charge to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year. The Hotel Unit Owner shall fix the date of commencement and the amount of the charge against the Residential Units for each charge period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Residential Units and charges applicable thereto which shall be kept in the office of the Hotel Unit Owner and shall be open to inspection by any Owner. Written notice of the charge shall thereupon be sent to every Unit Owner subject thereto twenty (20) days prior to payment of the first installment thereof, except as to special charges. In the event no such notice of the charges for a new charge period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

- 12.4 Effect of Non-Payment of Charge; the Personal Obligation; the Lien; Remedies of the Hotel Unit Owners. If the charges (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such charges (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Unit and all improvements thereon which shall bind such Unit in the hands of the then Owner, and such Owner's heirs, personal representatives, successors and assigns. Except as provided in Section 12.5 to the contrary, the personal obligation of an Owner to pay such charge shall pass to such Owner's successors in title and recourse may be had against either or both. If any installment of a charge is not paid within fifteen (15) days after the due date, at the option of the Hotel Unit Owner, a late charge not greater than the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) and the Hotel Unit Owner may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Unit on which the charges and late charges are unpaid and all improvements thereon, may foreclose the lien against the applicable Unit and all improvements thereon on which the charges and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in such action shall be added to the amount of such charges, late charges and interest secured by the lien, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels. Failure of the Hotel Unit Owner (or any collecting entity) to send or deliver bills or notices of charges shall not relieve Owners from their obligations hereunder. The Hotel Unit Owner shall have such other remedies for collection and enforcement of charges as may be permitted by applicable law. All remedies are intended to be, and shall be, cumulative.
- 12.5 Subordination of the Hotel Unit Owner's Lien. The lien of the charges provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage; provided, however, that any such mortgage lender when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any charge coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid charge which cannot be collected as a lien against any Unit by reason of the provisions of this Section shall be deemed to be a charge divided equally among, payable by and a lien against all Units, including the Units as to which the foreclosure (or conveyance in lieu of foreclosure) took place.
- 12.6 Curative Right. In the event (and only in the event) that the Hotel Unit Owner fails to maintain the Shared Components as required under this Declaration, the Association shall have the right to perform such duties; provided, however, that same may only occur after thirty (30) days' prior written notice to the Hotel Unit Owner and provided that the Hotel Unit Owner has not effected curative action within said thirty (30) day period (or if the curative action cannot reasonably be completed within said thirty (30) day period, provided only that the Hotel Unit Owner has not commenced curative actions within said thirty (30) day period and thereafter diligently pursued same to completion). To the extent that the Association must undertake maintenance responsibilities as a result of the Hotel Unit Owners' failure to perform same, then in such event, but only for such remedial actions as may be necessary, the Association shall be deemed vested with the Charge rights of the Hotel Unit Owner hereunder for the limited purpose of obtaining reimbursement from the Hotel Unit Owner for the costs of performing such remedial work.
- 12.7 Financial Records. The Hotel Unit Owner shall maintain financial books and records showing its actual receipts and expenditures with respect to the maintenance, operation, repair, replacement, alteration and insurance of the Shared Components, including the then current budget and any then proposed budget (the "Shared Components Records"). The Shared Components Records

need not be audited or reviewed by a Certified Public Accountant. The Shared Components Records shall at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.

- 12.8 Limitation Upon Liability of Hotel Unit Owner. Notwithstanding the duty of the Hotel Unit Owner to maintain and repair the Shared Components, the Hotel Unit Owner shall not be liable to any other Unit Owners (nor their guests, tenants or invitees) for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Shared Components. Further, the Hotel Unit Owner 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 or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Hotel Unit Owner pursuant to Section 8.1 hereof. The Hotel Unit also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Hotel Unit Owner did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Hotel Unit Owner could not obtain such insurance at reasonable costs or upon reasonable terms.
- 12.9 Hotel Unit Owners Consent; Conflict. The provisions of this Section 12 shall not be amended, modified or in any manner impaired and/or diminished, directly or indirectly, without the prior written consent of 4/5th of the Residential Unit Owners and the prior written consent of the Hotel Unit Owner. In the event of any conflict between the provisions of this Section 12, and the provisions of any other Section of this Declaration, the provisions of this Section 12 shall prevail and govern.
13. Insurance. Insurance obtained by the Hotel Unit Owner pursuant to the requirements of this Section 13 shall be governed by the following provisions:
- 13.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies required to be obtained by the Hotel Unit Owner hereunder shall be issued by an insurance company authorized to do business in Florida or by surplus lines carriers offering policies for properties in Florida.
 - (b) Named Insured. The named insured shall be the Hotel Unit Owner, individually, or such designee as may be designated by the Hotel Unit Owner, and as agent for the Association and the Owners of Units covered by the policy, without naming them, and as agent for the holders of any mortgage on a Unit (or any leasehold interest therein), without naming them. The Association, Unit Owners and the holders of any mortgage on a Unit (or any leasehold interest therein) shall be deemed additional insureds.
 - (c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Hotel Unit Owner and the holders of any mortgage on the Hotel Unit, as their interests may appear.
 - (d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Hotel Unit Owner upon request to the holders of any mortgage on a Unit. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
 - (e) Personal Property and Liability. Except as specifically provided herein, the Hotel Unit Owner shall not be responsible to other Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Units, including, but not limited to, the improvements, Owners' personal property, nor insurance for the Owners' personal liability and living expenses, nor for any other risks not otherwise insured in accordance herewith.

13.2 Coverage. The Hotel Unit Owner shall maintain insurance covering the following:

- (a) Casualty. The Shared Components, together with all fixtures, building service equipment, personal property and supplies constituting the Shared Components (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, the Residential Units, the portions of the Hotel Unit which are not part of the Shared Components, and all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Residential Unit Owners (or tenants of same), and all electrical fixtures, appliances, air conditioner and heating equipment and water heaters to the extent not part of the Shared Components. Such policies may contain reasonable deductible provisions as determined by the Hotel Unit Owner. Such coverage shall afford protection against loss or damage by 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 buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) 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 Hotel Unit Owner, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Worker's Compensation and other mandatory insurance, when applicable, to the extent applicable to the maintenance, operation, repair or replacement of the Shared Components.
- (d) Flood Insurance covering the Insured Property, if so determined by the Hotel Unit Owner.
- (e) Such Other Insurance as the Hotel Unit Owner shall determine from time to time to be desirable in connection with the Shared Components.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) as to property insurance policies, subrogation against the Association 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 Hotel Unit Owner (or any of its employees, contractors and/or agents), one or more Unit Owners or as a result of contractual undertakings. Additionally, and each policy shall provide 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 Hotel Unit Owner.

- 13.3 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. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Hotel Unit Owner may 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 Section.
- 13.4 Premiums. Premiums upon insurance policies purchased by the Hotel Unit Owner pursuant to this Section 13 shall be among the costs assessed against the Unit Owners in accordance with the provisions of Section 12. Premiums may be financed in such manner as the Hotel Unit Owner deems appropriate.
- 13.5 Share of Proceeds. All insurance policies obtained by or on behalf of the Hotel Unit Owner pursuant to this Section 13 shall be for the benefit of the Hotel Unit



Owner, the Association, the Unit Owners and the holders of any mortgage on a Unit (or any leasehold interest therein), as their respective interests may appear. The duty of the Hotel Unit Owner 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 the holders of any mortgage on the subject Unit(s) (or any leasehold interest therein) in accordance with the Allocated Interest attributable thereto.

13.6 Distribution of Proceeds. Proceeds of insurance policies required to be maintained by the Hotel Unit Owner pursuant to this Section 13 shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the 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 Owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

13.7 Hotel Unit Owner as Agent. The Hotel Unit Owner is hereby irrevocably appointed as agent and attorney-in-fact for the Association and 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 Hotel Unit Owner and to execute and deliver releases upon the payment of claims.

13.8 Unit Owners' Personal Coverage. The insurance required to be purchased by the Hotel Unit Owner pursuant to this Section 13 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 required to be carried by the Hotel Unit Owner hereunder.

13.9 Effect on Association. The Association shall only maintain such insurance as is expressly required to be maintained by the Association pursuant to the Act, it being the express intent of the Developer, as the Owner of each and every of the Units upon the recordation hereof, for itself and its successors and assigns, that the Association not be required to maintain insurance hereunder. To the extent that the Association is required to maintain insurance pursuant to the express requirements of the Act, then (a) as to any insurance required to be maintained by the Association, the Hotel Unit Owner shall be relieved and released of its obligation hereunder to maintain same, and (b) all of the provisions hereof regarding said insurance, any claims thereunder and the distribution and application of proceeds thereunder shall be governed in accordance with the terms of this Declaration governing the insurance required to be maintained by the Hotel Unit Owner as if the references herein to the Hotel Unit Owner were references to the Association.

13.10 Benefit of Mortgagees. Certain provisions in this Section 13 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

14. Reconstruction or Repair After Fire or Other Casualty.

14.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Hotel Unit Owner shall determine whether or not to repair and/or restore the Insured Property, and if a determination is made to effect restoration, the Hotel Unit Owner shall disburse the proceeds of all insurance policies required to be maintained by it under Section 13 to the contractors engaged in such repair and restoration in appropriate progress payments.

In the event the Hotel Unit Owner determines not to effect restoration to the Shared Components, the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their Allocated Interests; 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

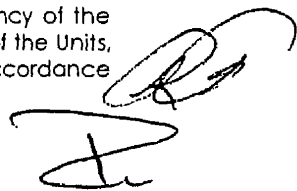
mortgages and liens on his Unit in the order of priority of such mortgages and liens.

- 14.2 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 Hotel Unit Owner, provided, however, that if any reconstruction is undertaken, same shall be undertaken in such a manner to restore the Residential Units to substantially the same condition they were in prior to the occurrence of the casualty..
- 14.3 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Hotel Unit Owner, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners by the Hotel Unit Owner (which shall be deemed to be assessments made in accordance with, and secured by the lien rights contained in, Section 12 above) in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective Allocated Interests.
- 14.4 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

- 15.1 Deposit of Awards. The taking of portions of the Shared Components by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Hotel Unit Owner. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Hotel Unit Owner; and in the event of failure to do so, in the discretion of the Hotel Unit Owner, a charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty.
- 15.4 Taking of Shared Components. Awards for the taking of Shared Components shall be used to render the remaining portion of the Shared Components usable in the manner approved by the Hotel Unit Owner; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Shared Components. The balance of the awards for the taking of Shared Components, if any, shall be distributed to the Unit Owners in accordance with their Allocated Interests. Notwithstanding the foregoing, in the event that the costs of restoration resulting from any taking exceed \$1,000,000.00, then the Hotel Unit Owner shall have the sole right to determine whether or not to repair and/or restore in the same manner as is provided in Section 14 above with respect to a casualty loss. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the said mortgagees.

16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:



- 16.1 Occupancy. Each Residential Unit shall be used as a residence only, whether for permanent, temporary or transient use, except as otherwise herein expressly provided, all in accordance with all applicable county and state codes, ordinances and regulations. The Hotel Unit may be used for any lawful purpose, and may be used by the Owner(s) thereof and its/their guests, tenants and invitees. The provisions of this subsection 16.1 shall not be applicable to Units used by the Developer for model apartments, sales or resales offices or management or administrative services.

The rights of Residential Unit Owners to use the Hotel Unit shall be limited to the extent granted in, and subject to the restrictions of, Section 3.3(d), and the obligation for payment of the assessments and charges set forth in Section 12 (provided, however, that in no event shall an Owner be denied access to and from the Owner's Unit). It is contemplated (but without creating an obligation whatsoever) that in addition to use as a typical hallway for pedestrian passage, the Hotel Unit will be utilized by the Hotel Unit Owner in such a manner as to provide hotel features for the Condominium, which may include (again without obligation, and without limitation) housekeeping, transient rental services and reservation services, room service, personal services, etc.

The provisions of this subsection 16.1 shall not be amended without the affirmative vote of not less than four-fifths (4/5ths) of the total voting interests of all Unit Owners.

- 16.2 Pet Restrictions. Domesticated dogs and/or cats may be maintained in a Residential Unit provided such pets are: (i) permitted to be so kept by applicable laws and regulations, (ii) not left unattended on balconies or in lanai areas, (iii) generally, not a nuisance to residents of other Units and (iv) not a pit bull or other breed considered to be dangerous by the Board of Directors; provided that neither the Developer, the Hotel Unit Owner, the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Developer, Hotel Unit Owner Board of Directors, each Unit Owner and the Association in such regard. Any such pets may not be brought onto the Shared Components, except only as permitted by the Hotel Unit Owner.
- 16.3 Parking. All vehicle parking shall be by valet only and subject to the procedures, rules and regulations adopted from time to time by the Hotel Unit Owner.
- 16.4 Hotel Related Service. The Owner from time to time of the Hotel Unit shall have the exclusive right (but not the obligation) to provide hotel and/or transient rental services, including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service, to the Condominium and the Unit Owners. No amendment to this Declaration or rule of the Association shall be adopted to impair or abridge the rights herein granted without an affirmative vote of not less than 80% of the voting interests of the Residential Unit Owners and 100% of the voting interests of the Hotel Unit Owner.
- 16.5 Alterations. Without limiting the generality of Section 8.1 hereof, but subject to Section 9 hereof, no Residential Unit Owner shall cause or allow improvements or changes to any Residential Unit, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association and/or Hotel Unit Owner, as applicable, in the manner specified in section 8.1 hereof. Curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Hotel Unit Owner, in which case they shall be removed and replaced with acceptable items.
- 16.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration, including, without limitation, activities or businesses conducted from the Hotel Unit, shall be deemed a nuisance.

- 16.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 16.7. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.
- 16.8 Leases. It is intended that the Units may be used for transient and/or hotel rentals. As such, leasing of Units or portions thereof shall not be subject to the approval of the Association and/or any other limitations, other than as expressly provided herein. Each tenant or occupant shall comply with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Hotel Unit Owner and/or Association from time to time, including, without limitation, any and all regulations and/or procedures adopted by the Hotel Unit Owner regarding mandatory check-in for Owners and residents, coordination of charging privileges and other matters reasonably necessary to allow Owners and hotel guests to be well integrated into a unified structure and operation. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association and/or the Hotel Unit Owner to repair any damage to the Common Elements, the Hotel Unit and/or the Shared Components resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and special charges may be levied against the Unit therefor. All tenancies are hereby made subordinate to any lien filed by the Condominium Association or the Hotel Unit Owner, whether prior or subsequent to such lease. Notwithstanding the foregoing, there shall be no minimum lease term for the rental of Units, nor shall there be a maximum number of times that a Unit may be leased. There shall be no amendment to this Section 16.8, or to any other provision of this Declaration which shall impair the rights established in this Section 16.8, without the prior approval of eighty percent (80%) of the entire voting interests of all Unit Owners.
- 16.9 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers and bathrooms, unless same meets or exceeds the sound insulation parameters established from time to time by the Hotel Unit Owner. Also, the installation of any improvement or heavy object must be submitted to and approved by the Hotel Unit Owner, and be compatible with the overall structural design of the building. The Hotel Unit Owner may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Hotel Unit Owner will have the right to specify the exact material to be used on balconies. Any use guidelines set forth by the Hotel Unit Owner shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Hotel Unit Owner has the right to require immediate removal of violations. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.
- 16.10 Exterior Improvements. Without limiting the generality of Sections 8.1 or 16.5 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written

consent of the Hotel Unit Owner. Notwithstanding the foregoing, any Unit Owner may display one portable removable United States flag in a respectful way.

- 16.11 Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Section 9.1 hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Units to the Association and the Hotel Unit Owner to use in the performance of its functions. No Owner shall change the locks to his Unit without so notifying the Association and Hotel Unit Owner and delivering to the Association and the Hotel Unit Owner a new set of keys (or access card or code, as may be applicable) to such Unit. The Hotel Unit Owner shall have the right to adopt reasonable regulations from time to time regarding access control and check-in, check-out procedures which shall be applicable to both hotel guests and Unit Owners.
- 16.12 Antennas, Satellite Dishes. To the extent permitted by applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Hotel Unit Owner.
- 16.13 Storage on Balconies/Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace area of the Condominium, including but not limited to towels, clothing, bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace area, but all such patio furniture, planters and others must be reasonably acceptable to the Hotel Unit Owner. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Hotel Unit Owner shall be final and dispositive..
- 16.14 Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Section 16 shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.
17. Selling, Leasing and Mortgaging of Units. Subject to the provisions of this Declaration, each Unit Owner shall have the right to sell, lease or mortgage his or her Unit without restriction. When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners.
18. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees

and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

18.2 Negligence and Compliance. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 19.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, 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 net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

20. Additional Rights of Mortgagees and Others.

20.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable

circumstances as determined by the Board; (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

20.2 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
- (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

20.3 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

21. Covenant Running With the Realty. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Realty and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Realty or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. Disclaimer of Warranties. Developer hereby disclaims any and all express or implied warranties as to continuance of any particular view (It being understood and agreed that construction on any adjacent properties may obstruct such view), design, construction, sound transmission, furnishing and equipping of the Condominium Property, except only those set forth in section 718.203 of the Act, to the extent applicable and to the extent that same have not expired by their terms. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. All unit owners, by virtue of acceptance of title to their respective units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

23. Additional Provisions.

23.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the

Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

- 23.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 23.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 23.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 23.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 23.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 23.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 23.8 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 23.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 23.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.



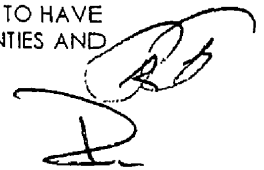
23.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

23.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), neither the Hotel Unit Owner nor the Association, except to the extent specifically provided to the contrary herein, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and/or the Hotel Unit Owner and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
- (b) neither the Hotel Unit Owner nor the Association are empowered, and neither has been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortious activities; and
- (c) the provisions of the Association Documents setting forth the uses of assessments and/or which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Hotel Unit Owner and/or Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title to his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Hotel Unit Owner and/or Association arising from or connected with any matter for which the liability of the Hotel Unit Owner and/or Association has been disclaimed hereby. As used herein, (i) "Association" shall include within its meaning, all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns, and (ii) "Hotel Unit Owner" shall include within its meaning all of its members, and its and their directors, officers, shareholders, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

23.14 NO REPRESENTATIONS OR WARRANTIES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DEVELOPER, HOTEL OWNER OR ITS OR THEIR AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE CONDOMINIUM PROPERTY, THE SHARED COMPONENTS, THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN DOCUMENTS WHICH MAY BE FILED BY DEVELOPER OR HOTEL OWNER FROM TIME TO TIME WITH APPLICABLE REGULATORY AGENCIES, AND (B) AS OTHERWISE REQUIRED BY LAW. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.



IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the ___ day of _____, 200__.

Witnessed by:

Luxury Resorts International, Inc., a Florida corporation

Name: _____

By: _____

Name: _____

Title: _____

(Corporate Seal)

Name: _____

Address: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 200__ by _____, as _____ President of **Luxury Resorts International, Inc., a Florida corporation**, on behalf of said company. He/she is personally known to me or produced _____ as identification.

Name: _____

My commission expires:

Notary Public, State of Florida
Commission No. _____

**BY-LAWS
OF
THE ATLANTIC HOTEL CONDOMINIUM ASSOCIATION, INC.**

*A corporation not for profit organized
under the laws of the State of Florida*

- 1 Identity. These are the By-Laws of **THE ATLANTIC HOTEL CONDOMINIUM ASSOCIATION, INC.** (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation.
 - 1.1 Fiscal Year. The fiscal year of the Association shall be the twelve month period commencing January 1st and terminating December 31st of each year.
 - 1.2 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. Definitions. For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration for **The Atlantic Hotel Condominium**, unless herein provided to the contrary, or unless the context otherwise requires.
3. Members.
 - 3.1 Annual Meeting. The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors, and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of October following the year in which the Declaration is filed.
 - 3.2 Special Meetings. Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing: (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 10.1 of these By-Laws; and (ii) as to special meetings regarding recall of Board members, reference should be made to Section 4.3 of these By-Laws.
 - 3.3 Participation by Unit Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Unit Owner to speak on such items in its discretion. Every Unit Owner who desires to speak at a meeting, may do so, provided that the Unit Owner has filed a written request with the Secretary of the Association not less than 48 hours prior to the scheduled time for commencement of the meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. Any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:
 - (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;
 - (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.
 - (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and

Exhibit "10"

- 3.4 Notice of Meeting; Waiver of Notice. Notice of a meeting of members (annual or special), stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be hand delivered or sent by regular mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as last furnished to the Association by the Unit Owner. However, if a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address initially identified for that purpose by the Developer and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or if the Owners disagree, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice for either special or annual meetings, which notice shall incorporate an identification of agenda items, shall be effected not less than fourteen (14) continuous days, nor more than sixty (60) days, prior to the date of the meeting. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of members' meetings shall be posted.

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

An officer of the Association, or the manager or other person providing notice of the meeting shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association, affirming that notices of meetings were posted and mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the appropriate address for such Unit Owner. No other proof of notice of a meeting shall be required.

- 3.5 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy (limited or general), of persons entitled to cast in excess of 33 1/3% of the votes of members entitled to vote at the subject meeting.

3.6 Voting.

- (a) Number of Votes. Except as provided in Section 3.11 hereof, in any meeting of members, the Owners of each Unit shall be entitled to cast the number of votes designated for their Unit as set forth in the Articles. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the votes entitled to be cast by the members and not a majority of the members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.
- (c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to

cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

- 3.7 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as specifically provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division. Limited proxies shall be permitted for votes taken to: waive or reduce reserves; waive financial statements; amend the Declaration, Articles or By-Laws; or for any other matter requiring or permitting a vote of Unit Owners. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Developer). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.
- 3.8 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.9 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
- (a) Call to order by President,
 - (b) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
 - (c) Appointment of inspectors of election;
 - (d) Counting of Ballots for Election of Directors;
 - (e) Proof of notice of the meeting or waiver of notice;
 - (f) Reading of minutes;
 - (g) Reports of officers;
 - (h) Reports of committees;
 - (i) Unfinished business;
 - (j) New business;
 - (k) Adjournment
- Such order may be waived in whole or in part by direction of the chairman.
- 3.10 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or which may be taken at

number of votes that would be necessary to authorize or take such action at a meeting of members at which all members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board of three (3) directors. Directors must be natural persons who are 18 years of age or older. Any 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 (provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony). Directors may not vote at Board meetings by proxy or by secret ballot.

4.2 Election of Directors. Election of Directors shall be held at the annual members' meeting, except as herein provided to the contrary. Not less than sixty (60) days prior to a scheduled election, the Association shall mail or deliver to each Unit Owner entitled to vote, a first notice of the date of election. Any Unit Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Secretary of the Association not less than forty (40) days prior to the scheduled election. Together with the notice of meeting and agenda sent in accordance with Section 3.4 above, the Association shall then, mail or deliver a second notice of the meeting to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8-1/2 inches by 11 inches furnished by the candidate, which must be furnished by the candidate to the Association not less than thirty five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association. The Association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

The election of directors shall be by written ballot or voting machine. Proxies shall in no event be used in electing the Board at general elections or to fill vacancies caused by resignation or otherwise, provided, however, that limited proxies may be used to fill a vacancy resulting from the recall of a director, in the manner provided by the rules of the Division. Elections shall be decided by a plurality of those ballots and votes cast. There shall be no quorum requirement, however at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the Board. There shall be no cumulative voting.

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

4.3 Vacancies and Removal.

(a) Except as to vacancies resulting from removal of Directors by members (as addressed in subsection (b) below), vacancies in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors at any Board meeting (even if the remaining Directors constitute less than a quorum), provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.15 hereof shall be filled by the Developer without the necessity of any meeting.

(b) Any Director elected by the members (other than the Developer) may be removed by concurrence of a majority of the voting interests of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of all voting interests. The vacancy shall be filled by the Developer.

By common consent said agreement also designates a new Director to take the place of the one removed. The conveyance of all Units owned by a Director in the Condominium (other than appointees of the Developer or Directors who were not Unit Owners) shall constitute the resignation of such Director.

- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by members other than the Developer of the Condominium, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.
 - (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.
- 4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. Notwithstanding the foregoing, any Director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment. The directors calling the organizational meeting shall give at least three (3) days advance notice thereof, stating the time and place of the meeting.
- 4.6 Meetings. Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Meetings of the Board of Directors may be held by telephone conference, with those Directors attending by telephone counted toward the quorum requirement, provided that a telephone speaker must be used so that the conversation of those Directors attending by telephone may be heard by the Directors and any Unit Owners attending such meeting in person. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Meetings of the Board of Directors and any Committee thereof at which a quorum of the members of that Committee are present shall be open to all Unit Owners. Any Unit Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Division. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Adequate notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in the event of an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Notwithstanding the foregoing, written notice of any meeting of the Board at which nonemergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed or approved, shall be mailed or delivered to all Unit Owners and posted conspicuously on the Condominium property not less than fourteen (14) continuous days prior to the meeting. Evidence of compliance with this fourteen (14) continuous day notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of Board and/or Committee meetings shall be posted. Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the Directors or where required by the Act. A Director or member of a Committee of the Board of Directors may submit in writing his/her agreement or disagreement with any action taken at a meeting that such individual did not attend. This agreement or disagreement may not be used for the purposes of creating a quorum.

Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.

- 4.8 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.9 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required (e.g., with respect to budget adoption)
- 4.10 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other Unit Owner to preside).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.

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

- 4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years
- 4.14 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable.
- 4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units in the Condominium. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Upon the election of such director(s), the Developer shall forward to the Division of Florida Land Sales, Condominiums and Mobile Homes the name and mailing address of the director(s) elected. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors: (a) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) three months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed.

... or entered for sale by the Developer in the ordinary course of business; or (e) seven (7) years after recordation of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer may transfer control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than sixty (60) days' notice of an election for the member or members of the Board of Directors. The notice may be given by any Unit Owner if the Association fails to do so.

At the time the Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and such Unit Owners shall accept control. At that time (except as to subparagraph (g), which may be ninety (90) days thereafter) Developer shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable to the Condominium:

- (a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of Incorporation of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute book, including all minutes, and other books and records of the Association.
- (e) Any rules and regulations which have been adopted.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the association, and source documents from the incorporation of the Association through the date of the turnover. The records shall be audited for the period from the incorporation of the Association or from the period covered by the last audit, if applicable, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amounts of Assessments.
- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the

Property.

- (k) A list of the names and addresses of all contractors, subcontractors and suppliers, of which Developer had knowledge at any time in the development of the Condominium, utilized in the construction or remodeling of the improvements and the landscaping of the Condominium and/or Association Property.
- (l) Insurance policies
- (m) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property.
- (n) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (p) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
- (q) Leases of the Common Elements and other leases to which the Association is a party, if applicable.
- (r) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service
- (s) All other contracts to which the Association is a party.

5. Authority of the Board.

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

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

- ... causing repairs to the Condominium and Association Property to be obtained and reviewed.
- (k) Causing repairs, additions and improvements to, or alterations of, Condominium Property and Association Property to be made, and causing repairs to and restoration of Condominium and Association Property to be made, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
 - (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
 - (m) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied. No fine may exceed \$100.00 per violation, however, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided however, that no such fine shall in the aggregate exceed \$1,000.00. No fine shall become a lien upon a Unit.
 - (n) Purchasing or leasing Units for use by resident superintendents and other similar persons or for the general use and enjoyment of the Unit Owners.
 - (o) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of Common Elements (if the need for the funds is unanticipated) or the acquisition of real property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$100,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit.
 - (p) Subject to the provisions of Section 5.2 below, contracting for the management and maintenance of the Condominium and Association Property and authorizing a management agent (who may be an affiliate or agent of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
 - (q) At its discretion, but within the parameters of the Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
 - (r) Causing all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.) to be executed, and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
 - (s) The duty and obligation to comply with any requirements of any Federal, State or local rule, regulation, and act.

boundaries of) the Condominium Property.

- (t) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
 - (u) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.
- 5.2 Contracts. Any contract which is not to be fully performed within one (1) year from the making thereof, for the purchase, lease or renting of materials or equipment to be used by the Association in accomplishing its purposes, and all contracts for the provision of services, shall be in writing. Where a contract for purchase, lease or renting materials or equipment, or for the provision of services, requires payment by the Association on behalf of the Condominium in the aggregate exceeding \$5,000.00, the Association shall obtain competitive bids for the materials, equipment or services. Nothing contained herein shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association and contracts for attorney, accountant, architect, community association manager, engineering and landscape architect services shall not be subject to the provisions hereof. Further, nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency; nor shall the provisions hereof apply if the business entity with which the Association desires to contract is the only source of supply within the County.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers, other than designees of the Developer, must be Unit Owners (or authorized representatives of corporate/partnership/trust Unit Owners).
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- 6.6 Developer Appointees. No officer appointed by the Developer may be removed except as provided in Section 4.15 hereof and by law.

7. Fiduciary Duty. The officers and directors of the Association, as well as any manager employed by the Association, have a fiduciary relationship to the Unit Owners. No officer, director or manager shall solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer

... shall be in accordance with the Act. Notwithstanding the foregoing, this paragraph shall not prohibit an officer, director or manager from accepting services or items received in connection with trade fairs or education programs.

8. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.
9. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer or officers who were not Unit Owners) shall constitute a written resignation of such Director or officer.
10. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions.

10.1 Budget.

(a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for all Condominiums governed and operated by the Association (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of such Condominium(s) and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, if the Association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements, the budget or a schedule attached thereto shall show amounts budgeted therefor. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount of reserves shall be computed by means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost of each reserve item. The Association may adjust replacement and reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. Prior to transfer of control of the Association to Unit Owners other than the Developer, the Developer may vote to waive reserves or reduce the funding of reserves for the first two (2) fiscal years of operation of the Association, beginning with the fiscal year in which the Declaration is recorded, after which time and until transfer of control of the Association to Unit Owners other than the Developer, reserves may only be waived or reduced upon the vote of a majority of all non-Developer voting interests voting in person or by limited proxy at a duly called meeting of the Association. Following transfer of control of the Association to Unit Owners other than the Developer, the Developer may vote its voting interest to waive or reduce the funding of reserves. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures, unless their use for any other purposes is approved in advance by a majority vote at a duly called meeting of the Association. Prior to transfer of control of the Association to Unit Owners other than the Developer, the Association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-Developer voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

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

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be hand delivered to each Unit Owner or mailed to each Unit Owner (at the address last furnished to the Association) not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing

- (ii) Special Membership Meeting. If the Board of Directors adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed one hundred fifteen percent (115%) of such Assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days following the adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests. The special meeting shall be conducted within sixty (60) days following the adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board of Directors shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board of Directors shall take effect as scheduled.
- (iii) Determination of Budget Amount. Any determination of whether assessments exceed one hundred fifteen percent (115%) of assessments for the preceding fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board of Directors does not expect to be incurred on a regular or annual basis, or assessments for betterments to the Condominium Property.
- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior fiscal year's Assessments, as herein defined, without the approval of a majority of all voting interests.
- (b) Adoption by Membership In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 10.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

10.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 10.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

10.3 Special Assessments and Assessments for Capital Improvements. Special Assessments and Capital Improvement Assessments (as defined in the Declaration) shall be levied as provided in the Declaration and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments.

upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future assessments.

- 10.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida, which bank or banks must be insured by the FDIC, as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. In addition, a separate reserve account should be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes, provided that the funds so commingled shall be accounted for separately and the combined account balance of such commingled funds may not, at any time, be less than the amount identified as reserve funds in the combined account.
- 10.5 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate the balance of the current budget years' Assessments upon thirty (30) days' prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the current budget years' Assessments shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.
- 10.6 Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse 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
- 10.7 Accounting Records and Reports. The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within ninety (90) days following the end of the fiscal year, the Association shall prepare and complete, or cause a third party to prepare and complete, a financial report for the preceding fiscal year (the "Financial Report"). Within twenty-one (21) days following the receipt or completion, as applicable, of the Financial Report, the Board shall mail, or furnish by personal delivery, a copy of the Financial Report to each Unit Owner, or a notice that a copy of the Financial Report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner

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

- (a) REPORT OF CASH RECEIPTS AND EXPENDITURES – if the Association's revenues are less than \$100,000.00 or if the Association operates less than fifty (50) Units (regardless of revenue) [or, if determined by the Board, the Association may prepare any of the reports described in subsections (b), (c) or (d) below in lieu of the report described in this section (a)]
- (b) COMPILED FINANCIAL STATEMENTS – if the Association's revenues are equal to or greater than \$100,000.00, but less than \$200,000.00 [or, if determined by the Board, the Association may prepare any of the reports

- (c) REVIEWED FINANCIAL STATEMENTS – if the Association's revenues are equal to or greater than \$200,000.00, but less than \$400,000.00 [or, if determined by the Board, the Association may prepare the report described in subsection (d) below in lieu of the report described in this section (c)].
- (d) AUDITED FINANCIAL STATEMENTS – if the Association's revenues are equal to or exceed \$400,000.00.

A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

If approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may prepare or cause to be prepared. (i) a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement; (ii) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or (iii) a report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement. Such meeting and approval must occur prior to the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. Prior to the time that control of the Association has been turned over to Unit Owners other than the Developer, all Unit Owners, including the Developer, may vote on issues related to the preparation of financial reports for the first two (2) fiscal years of the Association's operation. Thereafter, until control of the Association has been turned over to Unit Owners other than the Developer, all Unit Owners except for the Developer may vote on such issues.

- 10.8 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.
- 10.9 Notice of Meetings. Notice of any meeting where Assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.
- 11 Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
- 12. Parliamentary Rules. Except when specifically or impliedly waived by the chairman of a meeting (either of members or directors), Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Robert's Rules shall not be made so as to frustrate the will of the persons properly participating in said meeting.
- 13. Amendments. Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner:
 - 13.1 Notice Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
 - 13.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:
 - (a) by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or

- 13.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.
- 13.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
14. Rules and Regulations. The Board of Directors may, from time to time, adopt, modify, amend or add to rules and regulations concerning the use of portions of the Condominium and Association Property, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
15. Official Records. From the inception of the Association, the Association shall maintain for the condominium, a copy of each of the following, where applicable, which shall constitute the official records of the Association:
- (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;
 - (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;
 - (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
 - (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
 - (e) A copy of the current Rules and Regulations of the Association;
 - (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than 7 years.
 - (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers;
 - (h) All current insurance policies of the Association and of all Condominiums operated by the Association;
 - (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
 - (j) Bills of Sale or transfer for all property owned by the Association;
 - (k) Accounting records for the Association and the accounting records for the Condominium. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:
 - (i) Accurate, itemized, and detailed records for all receipts and expenditures
 - (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.

- (iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year;
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections which shall be maintained for a period of 1 year from the date of the meeting to which the document relates.
- (m) All rental records where the Association is acting as agent for the rental of Units.
- (n) A copy of the current Question and Answer Sheet, in the form promulgated by the Division, which shall be updated annually.
- (o) All other records of the Association not specifically listed above which are related to the operation of the Association.

The official records of the Association shall be maintained in the County in which the Condominium is located, or if in another county, then within twenty five (25) miles of the Condominium

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

- (i) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, and any record protected by the work-product privilege including any record prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation or imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.
 - (ii) Information obtained by an Association in connection with the approval of the lease, sale or other transfer of a Unit
 - (iii) Medical records of Unit Owners.
16. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Units to the applicable condominium fire and life safety code.
17. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
18. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof

The foregoing was adopted as the By-Laws of THE ATLANTIC HOTEL CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, as of the _____ day of _____, 2002.

Approved:

Daniel J. Melk, President

Randall P. Fiorenza, Secretary

ARTICLES OF INCORPORATION
FOR
THE ATLANTIC HOTEL CONDOMINIUM
ASSOCIATION, INC.

The undersigned incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

ARTICLE 1
NAME

The name of the corporation shall be **THE ATLANTIC HOTEL CONDOMINIUM ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2
OFFICE

The principal office and mailing address of the Association shall be at 601 North Fort Lauderdale Beach Blvd., Fort Lauderdale, Florida 33304, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act

ARTICLE 3
PURPOSE

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

ARTICLE 4
DEFINITIONS

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

ARTICLE 5
POWERS

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

- 5.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.
- 5.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in conflict with the Act), and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
 - (a) To make and collect Assessments and other charges against members as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Common Elements and/or Association Property, and other property acquired or leased by the Association
 - (d) To purchase insurance upon the Common Elements and Association Property and insurance for the protection of the Association, its officers, directors and Unit

Exhibit " 11 "

the health, comfort, safety and welfare of the Unit Owners.

- (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
 - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Common Elements and Association Property.
 - (h) To contract for the management and maintenance of the Common Elements and/or Association Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
 - (i) To employ personnel to perform the services required for the proper operation of the Common Elements and the Association Property.
 - (j) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, appoints and designates the Board of Directors of the Association as such Owner's agent and attorney-in-fact to execute, any and all such documents or consents.
- 5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).
- 5.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 6 MEMBERS

- 6.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.
- 6.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 6.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Residential Unit. The Hotel Unit and each Retail/Commercial Unit shall be entitled to cast five (5) votes each. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast the aggregate number of votes attributable to all Units owned.
- 6.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

The Association shall have perpetual existence.

ARTICLE 8
INCORPORATOR

The name and address of the Incorporator of this Corporation is:

<u>NAME</u>	<u>ADDRESS</u>
Daniel J. Melk	5252 Fisher Island Drive Miami FL 33109

ARTICLE 9
OFFICERS

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

Chairman/President:

Daniel J. Melk	5252 Fisher Island Drive Miami FL 33109
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Secretary/Treasurer:

Randall P. Fiorenza	5292 Fisher Island Drive Miami FL 33109
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ARTICLE 10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Association.
- 10.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 10.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 10.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 10.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Daniel J. Melk	5252 Fisher Island Drive Miami FL 33109
Randall P. Fiorenza	5292 Fisher Island Drive Miami FL 33109
Jeff Portanova	92 Oak Street New Canaan, CT 06840

position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the manners presented, legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or a Committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

ARTICLE 11 INDEMNIFICATION

- 11.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- 11.3 Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- 11.4 Determination of Applicability Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made:
- (a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;
 - (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
 - (c) By independent legal counsel:
 - 1. selected by the Board of Directors prescribed in paragraph 11.4(a) or the committee prescribed in paragraph 11.4(b); or

and the committee cannot be designated under paragraph 11.4(b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or

- (d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- 11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph 11.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.
- 11.6 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.
- 11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:
- (e) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
 - (f) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
 - (g) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.
- 11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.
- 11.9 Application to Court. Notwithstanding the failure of a Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:
- (h) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
 - (i) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or
 - (j) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 11.1, subsection 11.2, or subsection 11.7, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in

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

- 11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.
- 11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 11 shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE 12 BY-LAWS

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

ARTICLE 13 AMENDMENTS

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

- 13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 13.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 5.3, 5.4 or 5.5, without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer and/or Institutional First Mortgagees, unless the Developer and/or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this paragraph 13.3 shall be effective.
- 13.4 Developer Amendments. To the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.
- 13.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Broward County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

ARTICLE 14
INITIAL REGISTERED OFFICE:
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 5252 Fisher Island Drive, Miami Florida 33109, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Daniel J. Melk.

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

Daniel J. Melk, Incorporator

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing articles of incorporation, in the County of Broward, State of Florida, the Association named in the said articles has named Daniel J. Melk, located at 5252 Fisher Island Drive, Miami Florida 33109, as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

Daniel J. Melk, Registered Agent

DATED this _____ day of
_____, _____

FAX ADIT No. H00000047005

**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
MLK DEVELOPMENT, INC.**

Pursuant to the Florida Business Corporation Act, Article I of the Articles of Incorporation of **MLK DEVELOPMENT, INC.**, a Florida corporation, hereinafter referred to as the "Corporation", is amended to read as follows:

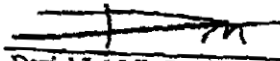
ARTICLE I Name

The name of the Corporation is **LUXURY RESORTS INTERNATIONAL, INC.**

The foregoing Amendment to the Articles of Incorporation of the Corporation was proposed by all of the directors of the Corporation and approved by the shareholders by Joint Written Consent effective as of August 21, 2000. The number of votes cast for the amendment was sufficient for approval.

IN WITNESS WHEREOF, the undersigned President of the Corporation has executed these Articles of Amendment this August 21, 2000.

MLK DEVELOPMENT, INC.,
a Florida corporation



Daniel J. Melk, President

FILED
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SUMMARY OF CERTAIN ASPECTS OF THE OFFERING

Description of Condominium

The name of the condominium is **THE ATLANTIC HOTEL CONDOMINIUM** (the "Condominium"). The Condominium is located or to be located at 601 North Fort Lauderdale Beach Blvd., Fort Lauderdale, Florida 33304. **Luxury Resorts International, Inc., a Florida corporation** (the "Developer"), is the owner of the unsold Units in the Condominium which are being offered for sale pursuant to this Prospectus. The Condominium will contain one (1) Building, which contains, in the aggregate, one hundred twenty nine (129) Units, consisting of one hundred twenty four (124) Residential Units, one (1) Hotel Unit and four (4) Retail/Commercial Units. The number of bedrooms and bathrooms in each Residential Unit in the Condominium is set forth on Schedule "A" attached hereto. Exhibit "2" to the Declaration of Condominium (attached hereto as Exhibit "A") consists of a survey of the Realty, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with the Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions.

The Condominium will consist only of the Units described herein, the Common Elements described in the Declaration of Condominium attached hereto as Exhibit "A" and the recreational facilities described in the section hereof entitled "Recreational and Certain Other Commonly Used Facilities Intended to be Constructed Within the Condominium Property". All other recreational and other commonly used facilities will be part of the Shared Components (as defined in the Declaration), all as more particularly described in this Prospectus.

The estimated latest date of completion of the construction, finishing and equipping of the Condominium (but not necessarily any of the improvements included in the Shared Components) is January 1, 2004, except as provided in the Purchase Agreement set forth as Exhibit "C" hereto to the contrary.

THE CONDOMINIUM WILL BE CREATED AND UNITS WILL BE SOLD IN FEE SIMPLE INTERESTS.

Condominium Structure

Together, the improvements constituting the Common Elements, Residential Units, Retail/Commercial Units and Hotel Unit have been, or shall be, built and operated as an integrated project. Given the integration of the structure of those improvements, and notwithstanding anything to the contrary depicted on the survey/plot plan attached to the Declaration, the following components of the improvements (the "Shared Components") shall be deemed part of the Hotel Unit, whether or not graphically depicted as such on said survey/plot plan: any and all structural components of the Improvements, including, without limitation, all exterior block walls and all finishes (paint, stucco etc) and balconies, terraces and/or facades attached or affixed thereto; the roof; all roof trusses, roof support elements and roofing insulation; all utility, mechanical, electrical, telephonic, telecommunications, plumbing and other systems, including, without limitation, all wires, conduits, pipes, ducts, transformers, cables and other apparatus used in the delivery of the utility, mechanical, telephonic, telecommunications, electrical, plumbing and/or other services; all heating, ventilating and air conditioning systems, including, without limitation, compressors, air handlers, ducts, chillers, water towers and other apparatus used in the delivery of HVAC services; all elevator shafts, elevator cabs, elevator cables and/or systems and/or equipment used in the operation of the elevators transversing the Condominium Property; and all trash rooms, trash chutes and any and all trash collection and/or disposal systems. In addition, the Shared Components include the following areas and/or facilities (together with a license for reasonable pedestrian access thereto, as determined by the Hotel Unit Owner): the pools and pool deck; the spa and fitness center, if any, which may be located from time to time within the improvements constructed upon the Hotel Unit; the porte cochere drop-off; the garage, garage ramp(s) and all parking control equipment; all covered breezeways, sidewalks and promenades; restroom facilities; and maid service rooms on guestroom floors. Notwithstanding anything herein, or in any of the exhibits hereto, contained to the contrary, the Shared Components shall be deemed part of the Hotel Unit. The Hotel Unit Owner shall have the right (but not the obligation), by Supplemental Declaration executed by the Hotel Unit Owner alone, to designate additional portions of the Hotel Unit as Shared Components hereunder. Notwithstanding the designation of the Shared Components, the Hotel Unit Owner shall have the right, from time to time, to expand, alter, relocate and or eliminate the portions of the Hotel Unit deemed Shared Components, without requiring the consent or approval of the Association or any Owner, provided that any portions withdrawn are not, in the reasonable opinion of the Hotel Unit Owner essential to the structural integrity of the Residential Units and/or the Hotel Unit.

Exhibit "C"

same shall be deemed Shared Components. It is expressly contemplated that persons other than Unit Owners shall be granted use rights in and to certain of the facilities of the Hotel Unit (such determination to be made in the sole and absolute discretion of the Hotel Unit Owner).

Recreational and Certain Other Commonly Used Facilities Intended to be Constructed Within the Condominium Property

There are not intended to be any recreational facilities constructed upon the Common Elements.

Recreational and Certain Other Commonly Used Facilities Intended to be Constructed Within The Hotel Unit to be Deemed Shared Components

The following facilities are intended to be constructed within the Hotel Unit and are to be included within the Shared Components. Except as provided in the Declaration to the contrary, these facilities may be used by Owners of Units in the Condominium, their guests, tenants and invitees, by the Owner of the Hotel Unit, its guests, tenants and invitees and by any other persons permitted by the Hotel Unit Owner, including, without limitation, all guests of the hotel intended to be operated upon the Hotel Unit. Notwithstanding the foregoing, the Hotel Unit Owner shall have the right to adopt establish rules and regulations regarding the use of these facilities, including, without limitation, rules to prohibit dual usage of facilities by a Unit Owner and a tenant of the Unit during periods when a Unit is being rented or is available for rental. The facilities are currently intended to include the following (all to be located on designated portions of the Hotel Unit):

<u>FACILITY AND ITS LOCATION</u>	<u>APPROXIMATE SIZE</u>	<u>APPROXIMATE CAPACITY</u>
Lobby (Ground Floor)	1273 square feet	85 persons
Swimming Pool	1,511 square feet with depth from 3' to 4.5'	57 persons
Spa	100 square feet	10 persons
Pool Deck	5,053 square feet	147 persons
Restrooms (Pool Deck)	416 square feet	8 persons
Fitness Room	864 square feet	58 persons
Spa Facility	4,428 square feet	295 persons

The facilities described above are intended to be constructed. The design, commencement and progress of any such construction, however, will be in the sole discretion of the Hotel Unit Owner, with use restricted, if at all, in the manner determined by the Hotel Unit Owner. The maximum number of Units which may be located within the Condominium at the time any of the above-described Facilities may be constructed will not exceed one hundred thirty (130) Units, subject to increase or decrease at any time and from time to time, depending on a variety of factors including, but not limited to, revised development plans, market conditions and governmental controls. Developer intends to expend approximately \$25,000.00 to provide certain personal property in and around these facilities (to be selected in the sole discretion of Developer).

Expansion of Recreational Facilities

RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE CONDOMINIUM ASSOCIATION.

The Hotel Unit Owner reserves the right at any time to eliminate, provide, alter or expand any of the above-described recreational facilities of the Hotel Unit as the Hotel Unit Owner deems appropriate. The consent of the Unit Owners or the Condominium Association shall not be required for any such construction, expansion or other determination. The cost of any such construction or expansion shall be borne exclusively by the Hotel Unit Owner. The Hotel Unit Owner is not obligated, however, to so expand any facilities or provide additional facilities.

See Sections 16.8 and 17 of the Declaration of Condominium for further details. As it is intended that the Units may be used for transient and/or hotel rentals, the Developer intends to engage in a program of renting or leasing sold and unsold Units upon such terms as Developer shall approve and as permitted by the Act and the rules promulgated thereunder. In the event any Unit is sold prior to the expiration of the term of a lease (which may occur during an indefinite period), title to such Unit (or Units) will be conveyed subject to the lease (or leases) and purchasers will succeed to the interests of the applicable lessor. If any Unit is sold subject to a lease, a copy of the executed lease will be attached to the Agreement for Sale in accordance with the terms of Florida Statutes, Section 718.503(1)(a)(4). If a Unit has been previously occupied, the Developer will so advise a prospective purchaser, in writing, prior to the time that the purchaser is requested to execute an Agreement for Sale, if required by law.

Management of the Condominium

There is not presently a contract for the management of the condominium property. The Association may, however, enter into an agreement with a manager to serve the Condominium. Any such management agreement, in addition to the means of termination which may be provided in the agreement, may be cancelled by unit owners pursuant to the Condominium Act, Florida Statutes, Section 718.302. Section 718.302(1)(a), Florida Statutes, provides in relevant part that:

If . . . unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the units in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the units other than the units owned by the developer. If a grant, reservation or contract is so cancelled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management or operation in lieu of the cancelled obligation, at the direction of the owners of not less than a majority of the units in the condominium other than the units owned by the developer.

Any fees which may be payable by the Association to a Manager shall be part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners.

Currently, there are no maintenance or service contracts affecting the Condominium having a non-cancellable term in excess of one year. The Association is empowered at any time and from time to time, to enter into such maintenance and/or service contracts for valuable consideration and upon such terms and conditions as the Board of Directors shall approve without the consent of Unit Owners. Any maintenance and/or service contracts may be subject to cancellation by the Association and by Unit Owners directly in accordance with the aforesaid Section 718.302, Florida Statutes.

Transfer of Control of the Associations

The initial officers and directors of the Condominium Association are or will all be designees of the Developer.

THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE CONDOMINIUM ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.

See Section 718.301, Florida Statutes, and Section 4.15 of the By-Laws of the Association, a copy of which By-Laws is set forth as Exhibit "4" to the Declaration of Condominium. The Directors of the Condominium Association designated by the Developer will be replaced by Directors elected by Unit Owners other than the Developer no later than is required by the applicable provisions of the Florida Condominium Act, Section 718.301, Florida Statutes.

Restrictions on Use of Units and Common Elements and Alienability. The following is a summary of certain of the restrictions which affect the Units. To the extent permitted by the Act, the Developer and certain related parties are exempt from these restrictions.

Occupancy. Each Residential Unit shall be used as a residence only, whether for permanent, temporary or transient use, except as otherwise herein expressly provided, all in accordance with all applicable county and state codes, ordinances and regulations. The Hotel Unit and the Retail/Commercial Units may be used for any lawful purpose, and may be used by the Owner(s) thereof and its/their guests, tenants and invitees.

The rights of Residential Unit Owners and Retail/Commercial Unit Owners to use the Hotel Unit shall be limited to the extent granted in, and subject to the restrictions of the Declaration and the

... obligation, and without limitation) housekeeping, transient rental services and reservation services, room service, personal services, etc.

Pet Restrictions. Domesticated dogs and/or cats may be maintained in a Residential Unit provided such pets are: (i) permitted to be so kept by applicable laws and regulations, (ii) not left unattended on balconies or in lanai areas, (iii) generally, not a nuisance to residents of other Units and (iv) not a pit bull or other breed considered to be dangerous by the Board of Directors; provided that neither the Developer, the Hotel Unit Owner, the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Developer, Hotel Unit Owner Board of Directors, each Unit Owner and the Association in such regard. No pet shall be brought onto the Shared Components except as permitted by the Hotel Unit Owner.

Hotel Related Service. The Hotel Unit Owner shall have the exclusive right (but not the obligation) to provide hotel and/or transient rental services, including, but not limited to, solicitation and/or provision of housekeeping, personal services (i.e., massage, personal training, dry cleaning, etc.) and/or food and beverage service, to the Condominium and the Unit Owners. No amendment to the Declaration or rule of the Association may be adopted to impair or abridge the rights granted to the Hotel Unit Owner related to Hotel Related Services without the affirmative vote of not less than 80% of the voting interests of the Residential Unit Owners and 100% of the voting interests of the Hotel Unit Owner.

Alterations. No Residential Unit Owner or Retail/Commercial Unit Owner shall cause or allow improvements or changes to any Residential Unit, Retail/Commercial Unit, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of said Unit, without obtaining the prior written consent of the Association. Curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Hotel Unit Owner, in which case they shall be removed and replaced with acceptable items.

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

No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. No activity specifically permitted by the Declaration shall be deemed to be a violation of this regulation.

Leases. It is intended that the Units may be used for transient and/or hotel rentals. As such, leasing of Units shall not be subject to the approval of the Association and/or any other limitations, other than as expressly provided in the Declaration. Each tenant or occupant shall comply with the covenants, terms, conditions and restrictions of the Declaration and with any and all rules and regulations adopted by the Hotel Unit Owner and/or Association from time to time, including, without limitation, any and all regulations and/or procedures adopted by the Hotel Unit Owner regarding mandatory check-in for Owners and residents, coordination of charging privileges and other matters reasonably necessary to allow Owners and hotel guests to be well integrated into a unified operation. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association and/or the Hotel Unit Owner to repair any damage to the Common Elements, the Hotel Unit and/or the Shared Components resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and special charges may be levied against the Unit therefor. All tenancies are subordinate to any lien filed by the Condominium Association or the Hotel Unit Owner, whether prior or subsequent to such lease. Notwithstanding the foregoing, there shall be no minimum lease term for the rental of Units, nor shall there be a maximum number of times that a Unit may be leased. There shall be no amendment to the foregoing leasing provisions without the prior approval of eighty percent (80%) of the entire voting interests of all Unit Owners.

as carpentry. Any and all replacements of hard surface floor coverings are to be of the same material as originally installed.

Association Access to Units. In order to facilitate access to Units by the Association, it shall be the responsibility of all Unit Owners to deliver a set of keys (or access card or code, as may be applicable) to their respective Units to the Association and the Hotel Unit Owner to use in the performance of its functions. No Owner shall change the locks to his Unit without so notifying the Association and Hotel Unit Owner and delivering to the Association and the Hotel Unit Owner a new set of keys (or access card or code, as may be applicable) to such Unit. The Hotel Unit Owner shall have the right to adopt reasonable regulations from time to time regarding access control and check-in, check-out procedures which shall be applicable to both hotel guests and Unit Owners.

Antennas, Satellite Dishes. No Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Hotel Unit Owner.

Parking. All vehicle parking shall be by valet only and subject to the procedures, rules and regulations adopted from time to time by the Hotel Unit Owner.

Storage on Balconies/Terraces. No equipment, materials or other items shall be kept or stored on any balcony or terrace area of the Condominium, including but not limited to towels, clothing, bicycles. The foregoing shall not prevent, however, placing and using patio-type furniture, planters and other items in such areas if same are normally and customarily used for a residential balcony or terrace area, but all such patio furniture, planters and others must be reasonably acceptable to the Hotel Unit Owner. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Hotel Unit Owner shall be final and dispositive.

THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.

For these and other restrictions upon the use of Units and Common Elements, reference should be made to all Exhibits contained in this Prospectus (particularly Sections 8, 16 and 17 of the Declaration) in addition to the specific references noted.

Utilities and Certain Services

Utilities and certain other services will be furnished or made available to the Condominium as follows:

Electricity	Florida Power & Light
Telephone	BellSouth
Water	City of Fort Lauderdale
Sanitary Sewage and Waste Disposal	City of Fort Lauderdale
Solid Waste Removal	Private Contractor(s) (to be determined)
Storm Drainage	Private system of natural and artificial percolation and run-off
Gas	TECO

Apportionment of Common Expenses and Ownership of the Common Elements

The Owner(s) of each Unit will own an undivided percentage interest in the Common Elements of the Condominium and Common Surplus of the Condominium Association and shall be obligated for a percentage share of the Common Expenses, said shares being set forth on Exhibit "3" to the Declaration of Condominium. The Common Expenses include all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. Common Expenses shall also include, without limitation: (i) all reserves required by the Act or otherwise.

Individual Unit Owners. Each Unit's percentage interest in the Common Elements and Common Surplus and percentage share of the Common Expenses will be as set forth in the Declaration, same being calculated generally based upon the relative square footage of each Unit.

In addition to the Assessments payable to the Association, each Unit Owner shall be obligated for payment of sums to the Hotel Unit Owner for use and enjoyment of the Shared Components. See Section 12 of the Declaration.

THE HOTEL UNIT OWNER HAS A LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE MAINTENANCE, OPERATION, UPKEEP AND REPAIR THE SHARED COMPONENTS, ALL AS DEFINED IN THE DECLARATION OF CONDOMINIUM. THE FAILURE TO MAKE THESE PAYMENTS, WHETHER BY THE CONDOMINIUM ASSOCIATION OR THE UNIT OWNER MAY RESULT IN FORECLOSURE OF THE LIEN ON THE INDIVIDUAL UNITS AS WELL AS ANY PROPERTY OF THE CONDOMINIUM ASSOCIATION.

Closing Expenses; The Agreement for Sale; Escrow Deposits

At the time of closing of title, the purchaser will pay a closing charge equal to one and one quarter percent (1.25%) of the purchase price of the applicable Unit. From this charge, the Developer will pay the costs of officially recording the deed, for documentary stamp taxes, and reimbursement for certain of Seller's closing administration expenses and Seller's attorneys' fees in connection with closing. The purchaser's closing charge will be subject to increase to the extent that any of such specifically mentioned costs increase. In addition, the purchaser shall pay for the premium on the owner's title insurance policy for the Unit.

At the time of closing of title, the purchaser will also make a contribution to the funds of the Condominium Association, said contribution to be in an amount equal to twice the monthly assessment amount payable to the Condominium Association (which contributions are not to be credited against regular assessments). This sum shall be deposited in the Association's accounts for the intended purpose of establishing initial operating funds and working capital and for initial, non-recurring expenses. Purchaser must also pay at the time of closing a working capital contribution in an amount equal to twice the monthly maintenance charge owed to the Hotel Unit Owner, which is payable directly to the Hotel Unit Owner to provide it with initial capital and shall not be credited against regular assessments. This sum shall be deposited in the appropriate entity's accounts for the intended purpose of establishing initial operating funds and working capital and for initial, non-recurring expenses. Notwithstanding the foregoing intent, however, all contributions may be used by the entity for any purpose (including, but not limited to, the reimbursement of the Developer for certain expenses as more particularly described in the subsection hereof entitled "Contracts to be Assigned by Developer").

Purchasers shall also be required to pay, at closing: (i) a reimbursement to Seller for any utility, cable or interactive communication deposits or hook-up fees which Seller may have advanced prior to closing for the Unit, (ii) any charge for any options or upgrading of standard items included, or to be included, in the Unit, (iii) a charge of \$150.00 for a computer update and recertification of title to the Unit, (iv) a reimbursement for charges incurred in connection with coordinating closing with purchaser or purchaser's lender, and (v) late charges, if applicable, all as provided in the Agreement.

If the Developer permits a closing to be rescheduled from the originally scheduled closing date at the request of a purchaser, such purchaser shall pay to the Developer, at the time of rescheduling, a late closing charge determined in the manner set forth in the Purchase Agreement. In addition, all closing prorations shall be made as of the originally scheduled closing date. Developer is not obligated to consent to any such delay.

All purchasers obtaining a mortgage also will pay any "points", origination fees, appraisal fees, prepaid interest due, lender's title insurance premiums, and all other charges the lender may charge at closing, and if required, an amount to be determined by the lender to establish an escrow for payment of real estate taxes and other charges relating to the Unit and any private mortgage insurance premiums, if applicable. Notwithstanding any of the references in this paragraph to coordinating closing with any lender that Buyer may elect to obtain, nothing herein shall be deemed to make this Agreement, or Buyer's obligations under this Agreement, conditional or contingent in any manner on Buyer obtaining a loan to finance any portion of the Purchase Price; it being the agreement of Buyer that Buyer shall be obligated to close "all cash".

The Developer is not obligated to provide a purchaser with a title opinion or an abstract of title. A policy of owner's title insurance, however, will be provided to a purchaser at the purchaser's expense after closing.

modification of any such Agreement or Agreements shall not vest any purchaser or Unit Owner whose Agreement was not so modified with any rights of any sort. Buyers' deposits will be held and disbursed in accordance with the Escrow Agreement attached hereto as Exhibit "D"

Sales Commissions

The Developer will pay the sales commissions, if any, of the on-premises sales agents retained by Developer in connection with the sale of the Units. The purchaser will be responsible for the commission of any other broker or salesman with whom purchaser may have dealt, unless Developer otherwise agrees in writing.

Identity of Developer

Luxury Resorts International, Inc., a Florida corporation, is the Developer of the Condominium. Being a relatively newly formed entity, it has no prior experience in the area of condominium or other real estate development. Daniel Melk is affiliated with the developer as the principal directing the creation and sale of the Condominium and has approximately eight years of experience in the areas of real estate construction and development. He has been involved with the development and management of condominiums located on Fisher Island in Miami/Dade County, Florida, and has also been involved with the development of six condominium projects, five single family home projects, and four townhouse projects in Chicago, Ill.

The information provided above as to Mr. Daniel Melk is given solely for the purpose of complying with Section 718.504(23), Florida Statutes, and is not intended to create or suggest any personal liability on the part of Mr. Daniel Melk.

Contracts to be Assigned by Developer

Upon or before closing of title to the first Unit, Developer shall assign to the appropriate Association all of Developer's right, title and interest in and to all contracts relating to the provision of utilities, insurance and other services to the Condominium, and from and after such date, all benefits and burdens thereunder shall accrue and apply to the applicable Association. The Developer shall be entitled to be reimbursed for all deposits, prepaid premiums, rentals and other consideration paid by the Developer to such insurers, contractors and utility companies, pro-rated as of the date of closing for each Unit, except that the deposits for utilities will be reimbursed in full without proration.

Natural Disturbances

Among other acts of God and uncontrollable events, hurricanes have occurred in South Florida and, as waterfront property, the Condominium is exposed to the potential damages of hurricanes, including, but not limited to, damages from storm surges and wind-driven rain. Water or other damages from this or other extraordinary causes shall not be the responsibility of the Developer.

Estimated Operating Budgets

Attached hereto as Exhibit "B-1" is the Estimated Operating Budget for the Condominium Association. Buyer understands that the Estimated Operating Budget provides only an estimate of what it will cost to run the Association during the period of time stated in the Budget. The Budget, however, is not guaranteed to accurately predict actual expenditures. It is intended that the Developer, as the sole Unit Owner upon the formation of the Condominium, will vote not to provide any reserves for the initial year of the Association. Thereafter, on an annual basis, a majority of the Association's members may vote to continue not to provide any reserves. If such a vote is in fact made to waive reserves, the assessments per unit will be as set forth in the Estimated Operating Budget as "Assessments per Unit - Without Reserves". If no such vote is made, the assessments per Unit will be as set forth in the Estimated Operating Budget as "Assessments per Unit - With Reserves".

A proposed Estimated Operating Budget for the Shared Components is set forth as Exhibit "B-2". It is anticipated that this Estimated Operating Budget shall provide for reserves.

Easements Located or to be Located on the Condominium Property

In addition to the various easements provided in the Declaration of Condominium attached hereto as Exhibit "A", the Condominium Property may be made subject to easements in favor of various public or private utilities. Any easements in favor of public or private utilities shall be subject to the terms and conditions of the applicable utility agreements.

For more details, refer to the Declaration of Condominium. The easements provided for in the Declaration of Condominium and the Florida Condominium Act are not summarized here.

Radon

Under the laws of the State of Florida, each prospective purchaser is hereby advised that radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. The foregoing notice is provided in order to comply with state law and is for informational purposes only. Developer does not conduct radon testing with respect to the Condominium and specifically disclaims any and all representations or warranties as to the absence of radon gas or radon producing conditions in connection with the Condominium.

Evidence of Ownership

Developer is the fee titleholder of the fee simple title to the property which is intended to be developed as the Condominium. Attached as Exhibit "E" to this Prospectus is evidence of the Developer's interest in and to the Condominium Property.

General

The foregoing is not intended to present a complete summary of all of the provisions of the various documents referred to herein. Statements made as to the provisions of such documents are qualified in all respects by the content of such documents.

Definitions

The definitions set forth in the Declaration of Condominium shall be applicable to this Prospectus, unless otherwise specifically stated or unless the context would prohibit.

Effective Date

This Prospectus is effective January 1, 2002.

SCHEDULE "A"
TO
PROSPECTUS TEXT
FOR
THE ATLANTIC HOTEL CONDOMINIUM

<u>Unit No.</u>	<u>Bedrooms</u>	<u>Bathrooms</u>
A	Studio	1
A(h)	Studio	1
A1	Studio	1
A2	Studio	1
B	Studio	1
L-1	Studio	1
C	1	2
L-2	Studio	1
D	1	1
D(H)	1	1
E	1	1
E(H)	1	1
F	Studio	1
F(H)	Studio	1
G	1	1
H	Studio	1
J	1	1
L-3	Studio	1
K	1	2
M	1	2
N	Studio	1
O	Studio	1
P	1	2
R	1	2
P-2a	2	3
P-2b	2	3
P-2c	3	3
P-1a	2	3
P-1b	2	3
S-Spa	Studio	1

THE ATLANTIC

FORT LAUDERDALE, FLORIDA



LEGAL DESCRIPTION:

Lot 1, A RESUBDIVISION OF BLOCK E, BIRCH OCEAN FRONT SUBDIVISION NO. 2, according to the plat thereof as recorded in Plat Book 26 at Page 33 of the Public Records of Broward County, Florida.

SURVEYOR'S NOTES:

- This site lies in Section 6, Township 50 South, Range 43 East, City of Fort Lauderdale, Broward County, Florida.
- All documents are recorded in the Public Records of Broward County, Florida unless otherwise noted.
- Lands shown hereon were not abstracted for easements and/or rights-of-way of records.
- Bearings hereon are referred to an assumed value of S 02°00'47" W for the West right of way line of North Atlantic Boulevard (State Road A-1-A), and evidenced by (2) set nail & disk.
- Elevations shown hereon are relative to the National Geodetic Vertical Datum of 1929, based on Broward County Bench Mark R-72, Elevation +8.29 Located by brass disk in sidewalk.
- Lands shown hereon are located in Federal Flood Zone X & A0 (Depth 1') per Community Panel No. 125105 0217 F, dated August 18, 1992, and index map revised October 2, 1997.
- Dimensions indicated hereon are field measured using a total station electronic distance measurement (EDM), unless otherwise noted.
- Lands shown hereon containing 36,970 square feet, or 0.849 acres, more or less.
- Precision of closure 1:10,000 - Commercial Class Survey.
- Roof overhang not located unless otherwise shown.
- Underground improvements and/or underground encroachments not shown unless otherwise indicated.
- The approximate location of all utilities shown hereon were determined from As-Built plans and/or on-site locations and should be verified before construction.
- Legal description shown hereon furnished by client.

SURVEYOR'S CERTIFICATION:

I hereby certify that this "Boundary & Topographic Survey" was made under my responsible charge on February 5, 2001, and meets the Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

"Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

THE ATLANTIC
FORT LAUDERDALE, FLORIDA



STATE OF FLORIDA

SS

COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared DANIEL C. FORTIN, by me well known and known to me to be the person hereinafter described, who being by me first duly cautioned and sworn, deposes and says on oath as follows, to wit:

1. That he is a duly registered and duly licensed Surveyor and Mapper authorized to practice under the laws of the State of Florida.

2. Affiant hereby certifies that the attached sketch and floor plans marked Exhibit B, together with the wording of the Declaration of Condominium is an accurate representation of the location and dimensions of the PROPOSED IMPROVEMENTS to the land according to the plans and specifications, and that there can be determined therefrom the identification, location, dimensions and size of the common elements and of each condominium unit therein. There may exist some variance, between the proposed improvements and the improvements as constructed.

3. That the improvements represented hereon are proposed and have not been constructed and must be inspected, measured, and recertified upon "substantial" completion in accordance with the provisions of Florida Statute 718.104

4. That the architectural plans used in the preparation of this Exhibit B, were prepared by OSCAR I. GARCIA, A.I.A. Architect Fl. Lic: AR0012551, 408 S. ANDREWS SUITE 101 FT, LAUDERDALE, FLORIDA 33301 Phone: (954) 462-9040 (954) 462-1090 Fax.

5. That the Elevations shown hereon are relative to the National Geodetic Vertical Datum of 1929, based on project datum.

FURTHER AFFIANT SAYETH NAUGHT.
FORTIN, LEAVY, SKILES, INC., LB3653

By: _____
Daniel C. Fortin, For The Firm
PROFESSIONAL SURVEYOR AND MAPPER LS2853
State of Florida

STATE OF FLORIDA

SS

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this November 19, 2001 by DANIEL C. FORTIN, who is personally known to me and who did not take an oath.

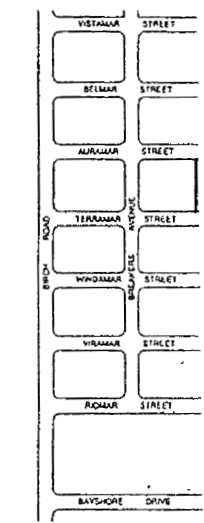
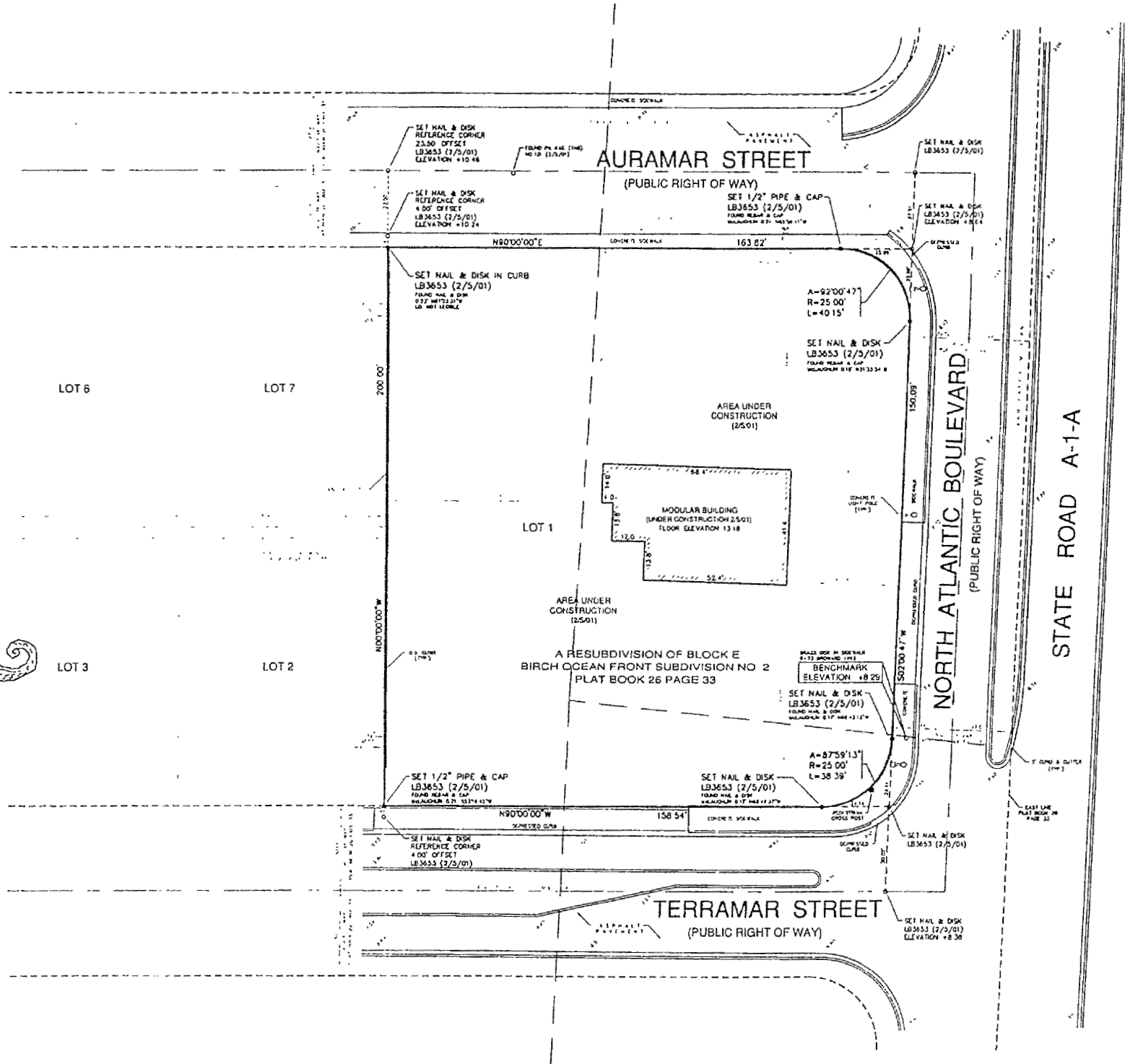
NOTARY PUBLIC-- State of Florida

11/19/01 12:45a
Date
rown By: RJM

FORTIN, LEAVY, SKILES, INC.

THE ATLANTIC

FORT LAUDERDALE, FLORIDA



LOCATION SKE
SCALE: 1" = 300'

LEGAL DESCRIPTION

Lot 1, A RESUBDIVISION OF BLOCK E BIRCH OCEAN FRONT 54 plot thereof as recorded in Plat Book 26 of Page 33 of the Florida

SURVEYOR'S NOTES.

- This site lies in Section 6 Township 50 South, Range 43 E Broward County, Florida
- All documents are recorded in the Public Records of Broward County, Florida
- Lots shown hereon were not abstracted for easements on
- Bearings hereon are referred to an assumed value of S 02° 00' 00" W of the North Atlantic Boulevard (State Road A-1-A) at disk
- Elevations shown hereon are relative to the National Geodetic based on Broward County Bench Mark R-72, Elevation +8.25 feet
- Lots shown hereon are located in Federal Flood Zone X & Special Ho 123105 0217 F, dated August 18, 1982, and no
- Dimensions indicated hereon are field measured using a total station (EDM), unless otherwise noted
- Lots shown hereon containing 36 870 square feet or 0.84
- Precision of closure 1:10 000 - Commercial Class Survey
- Roof overhang not located unless otherwise shown
- Underground improvements and/or underground encroachments otherwise indicated
- The approximate location of all utilities shown hereon were a phone and/or cable locations and should be verified before
- Legal description shown hereon furnished by client

SURVEYOR'S CERTIFICATION

I hereby certify that this "Boundary & Topographic Survey" was made on February 5, 2001, and meets the Minimum Technical Florida Board of Professional Surveyors and Mappers in Chapter Code, pursuant to Section 472.027, Florida Statutes

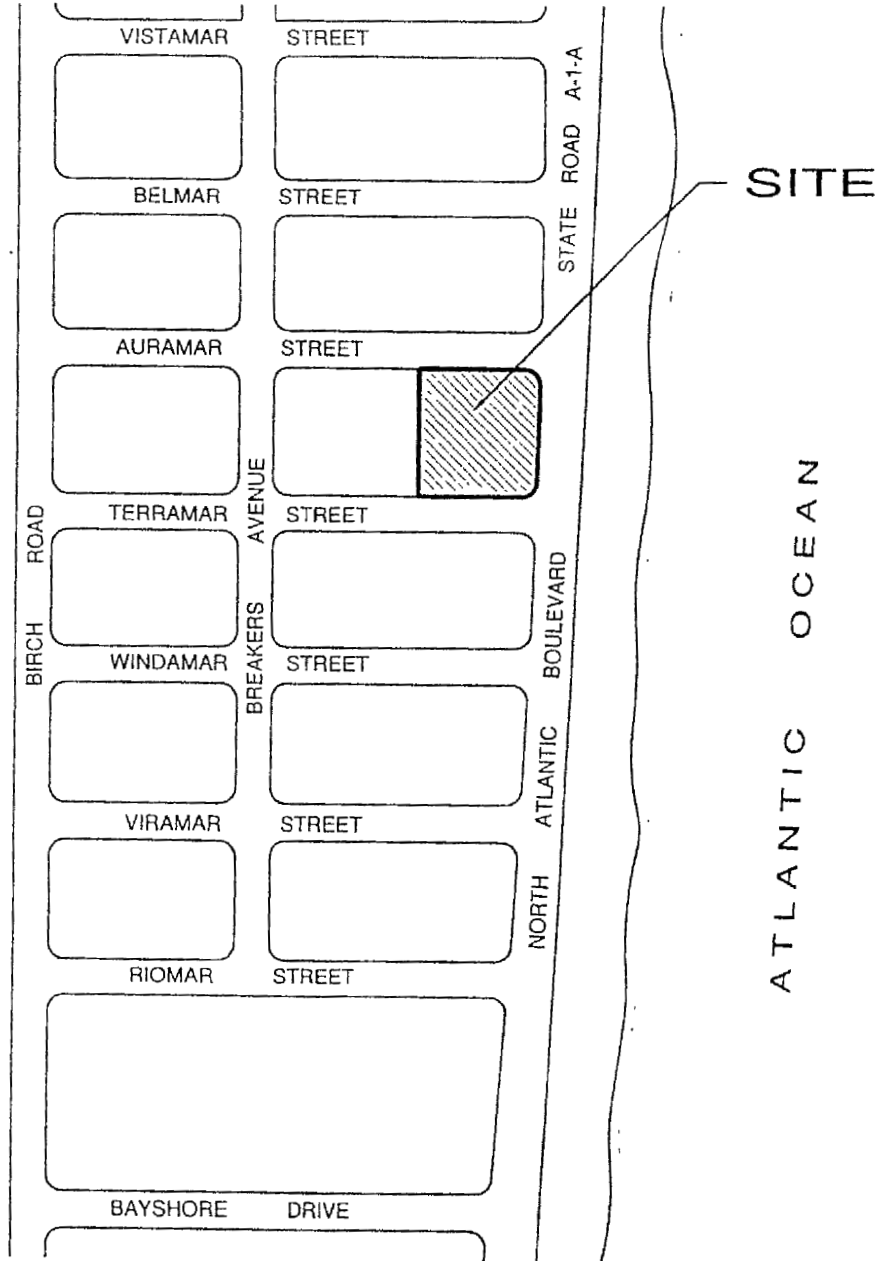
"Not to be effective until the signature and the original seal of a Florida Licensed Surveyor and Mapper"

FORTIN, LEAVY, SKILES, INC., LB3653

By:
Donna C. Fortin, For the Firm
Surveyor and Mapper
State of FL

THE ATLANTIC

FORT LAUDERDALE, FLORIDA



S Drawn By: RJM Date Printed: 11/19/01 12:45o

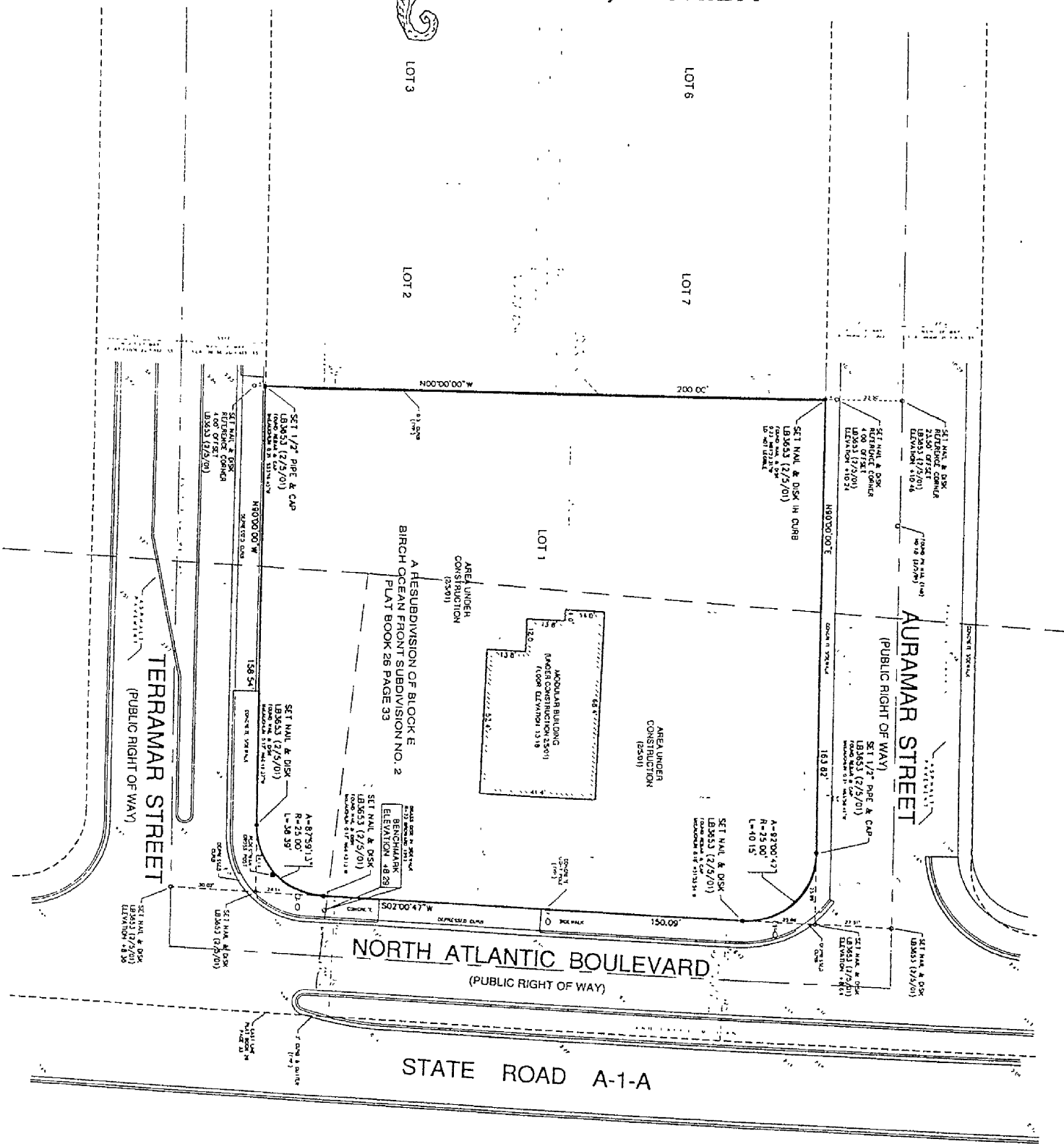
LOCATION SKETCH

SCALE: 1" = 300'

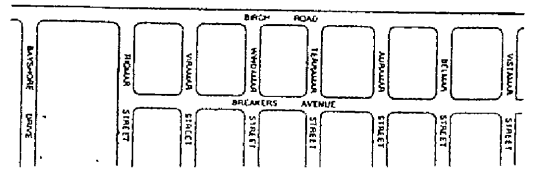


THE ATLANTIC

FORT LAUDERDALE, FLORIDA



LOCATION SKETCH
SCALE: 1" = 300'



LEGAL DESCRIPTION
Lot 1, a portion of Block E, Birch Ocean Front 5 Flats, as shown on Plat Book 26 of Page 33 of the

SURVEYOR'S NOTES
- The lot is in Block E, Township 20 South, Range 13
- All documents are recorded in the Public Records of Broward County, Florida
- The survey is based on the plat records of Block E, Birch Ocean Front 5 Flats, as shown on Plat Book 26 of Page 33 of the

SEVERAL NOTES
- The survey is based on the plat records of Block E, Birch Ocean Front 5 Flats, as shown on Plat Book 26 of Page 33 of the
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SURVEYOR'S CERTIFICATION
I, Surveyor, do hereby certify that this plat, showing a subdivision of land, was prepared by me or under my direct supervision and that I am a duly licensed Surveyor in the State of Florida, and that I am not a party to the same.

FORTIN LEAVY, SKILES, INC. 181853