

encroach upon the lawful rights of owners of other units. There shall be a joint use of the Common Elements and a joint mutual easement for that purpose is hereby created.

6. **RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.** The fee simple title of each condominium unit shall include both the condominium unit and an undivided interest in the Common Elements; said undivided interest in the Common Elements is deemed to be conveyed or encumbered with its respective condominium unit, even though the description in the instrument of conveyance may refer only to the fee simple title to the condominium unit. The share in the Common Elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit. Any attempt to separate and/or any action to partition the fee title to a condominium unit from the undivided interest in the Common Elements appurtenant to each unit shall be null and void.

7. **PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS.** Each of the unit owners of the condominium shall own an undivided interest in the Common Elements according to the "Schedule of Shares" attached hereto as Exhibit "B."

8. **COMMON EXPENSES AND COMMON SURPLUS.** The common expenses to be borne by each unit owner shall be a proportionate share of the total expenses and costs of the Association. Each unit owner shall be responsible for a portion of the common expenses and costs, and such share shall be in the percentage of the undivided share in the Common Elements to his unit as set forth in Exhibit "B" of this Declaration.

Any common surplus of the Association shall be owned by each of the unit owners in the same proportion as their percentage liability for common expenses.

9. **MAINTENANCE, ALTERATIONS AND IMPROVEMENTS.** Responsibility for the maintenance of the condominium property and restrictions upon its alterations and improvements shall be as follows:

9.1 **Units.**

9.1.1 **By the Association.** The Association shall maintain, repair and replace at the Association's expense:

9.1.1.1 All portions of the condominium building contributing to the support of the condominium building, which portions shall include, but not

be limited to, outside walls of the condominium building and all fixtures on its exterior, those portions of boundary walls not a part of unit; floor and ceiling slabs; load-bearing columns and load-bearing walls.

9.1.1.2 All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the common areas and the portions of a unit maintained by the Association; and all such facilities contained within a unit that service part, or parts, of the condominium other than the unit within which contained.

9.1.1.3 All incidental damage caused to a unit by such work immediately above-described shall be repaired promptly at the expense of the Association.

9.1.1.4 All Common Elements of the condominium.

9.1.2 **By the Unit Owner.** The responsibility of the unit owner, which is enforceable by the Association, shall be as follows:

9.1.2.1 To keep and maintain his unit, its equipment and appurtenances in good working order, condition and repair, and to perform promptly all maintenance and repair work within the unit which, if omitted, would affect the condominium in its entirety or in a part belonging to others; being expressly responsible for the damages and liability which his failure to do so may endanger. Notwithstanding anything contained in this Declaration, the owner of each unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all windows and exterior doors, including sliding glass doors, storm doors and windows, and all air-conditioning and heating equipment, whether located with or without the unit, stoves, refrigerators, fans and other appliances and equipment, including pipes, wiring, ducts, fixtures and/or their connection required to provide water, light, power, air-conditioning and heating, telephone, sewage and sanitary service to his unit which may now or hereafter be situated in his unit.

9.1.2.2 To maintain, repair and replace any and all walls, ceilings and floor interior surfaces, painting, decorating, furnishings and all other

accessories which such owner may desire to place and maintain in his unit.

9.1.2.3 Where applicable, to maintain and keep in a neat and trim condition the floor, interior walls, railings, columns or balconies.

9.1.2.4 To promptly report to the Association any defect or need for repairs for which the Association is responsible.

9.1.2.5 Plumbing and electrical repairs to fixtures and equipment located within a unit and exclusively servicing a unit shall be paid for and be a financial obligation of the unit owner.

9.1.2.6 The Association has the irrevocable right of access to each unit during reasonable hours, when necessary, for the maintenance, repair or replacement of any Common Elements or of any portion of a unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a unit or units.

9.1.2.7 Not to change the paint color or otherwise decorate or change the appearance of any portion of the exterior of the condominium building and/or property.

9.1.2.8 To keep clean and in orderly condition those Limited Common Elements which are assigned or granted to a particular unit to the exclusion of other units. The cost shall be borne by the owner or owners of the unit to which the same are appurtenant.

9.1.2.9 To maintain, repair and replace, at owner's expense, the heating and air-conditioning unit and all of its parts, serving only his unit.

9.1.2.10 Notwithstanding the above maintenance and repair obligations relative to attached balconies, which are Limited Common Elements appurtenant to units, individual unit owners shall not be responsible for structural defects or problems, including leaks. Repairs to balconies of structural defects or problems, including leaks, shall be an Association expense.

9.1.3 **Alteration and Improvement.** Except as elsewhere reserved to the Developer, neither a unit owner nor the Association shall make any alteration in the

portions of a unit that are to be maintained by the Association, remove any portion of such, make any additions to them, do anything that would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval of the Board of Directors of the Association responsible for the administration of the Association ("Board of Directors"). A copy of plans for all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

9.2 Common Elements.

9.2.1 **By the Association.** The maintenance and operation of the Common Elements, including the repair, maintenance and replacement of landscaping and other improvements and facilities, shall be the responsibility of the Association as a common expense.

9.2.2 **Alteration and Improvement.** There shall be no alteration or further improvement of the real property constituting the Common Elements without prior approval, in writing, by not less than two-thirds (2/3) of the members of the Association if the cost of same shall be a common expense which exceeds in cumulative expenditure for the calendar year, the sum of \$20,000.00. Any such alteration or improvement shall not interfere with the rights of any unit owner without their consent.

9.2.3 **Land Acquisition.** After all planned improvements are completed, land acquired by the Association may be added to the land submitted to condominium ownership hereby. This may be done by an amendment to this Declaration that includes the description of the acquired land, and submits the said land to condominium ownership under the terms of this Declaration. The amendment shall be executed by the Association and adopted by the unit owners in the manner elsewhere provided. Such amendment, when recorded in the public records of Escambia County, Florida, shall divest the Association of title to the land and shall state that it conveys all interest of the Association to and vests title in the unit owners, without naming them and without further conveyance, in the same proportion as the undivided shares in the Common Elements appurtenant to the units

owned by them.

9.2.4 **Land Not Incorporated.** Any land acquired by the Association that is not incorporated into the land by amendment of this Declaration, may be sold or mortgaged or otherwise disposed of by the Association after approval, in writing, by the record unit owners of not less than seventy-five percent (75%) of the Common Elements of Laguna Pointe Condominiums. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

9.2.5 **Personal Property.** Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

10. **USE RESTRICTIONS.** The use of the property shall be in accordance with the following provisions:

10.1 **Units.** Each of the units shall be occupied only by an owner, members of his family, his servants and guests, or his tenants, as a residence and for no other purpose.

10.2 **No Subdividing.** Except as reserved to the Developer, no unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the units to be affected thereby.

10.3 **Exterior Windows, Walls and Doors.** Except for commercial signage as otherwise permitted under this Declaration, nothing shall be hung, displayed or placed on the exterior walls, doors or windows of the unit or the condominium building without the prior written consent of the Board of Directors of the Association. All exterior windows shall be free from obstructions except curtains or drapes lined in white or beige, or blinds showing exterior in white or beige.

10.4 **No Clotheslines.** No clotheslines or similar devices shall be allowed on any porches, stoops or balconies of the condominium units or any other part of the condominium property without the written consent of the Board of Directors of the Association.

10.5 **Structural Additions and Alterations.** No owner shall make, allow or cause to be made any structural addition or alteration of his unit, the Common Elements, or the

Limited Common Elements, without the prior written consent of the Board of Directors of the Association.

10.6 Common Elements. The Common Elements shall be used only for the purpose for which they are intended.

10.7 Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper residential use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit, the Common Elements or the Limited Common Elements which will increase the cost of insurance upon the condominium property.

10.8 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

10.9 Signs. No signs (including without limitation "for lease" and "for sale" signs) shall be displayed from any unit, Limited Common Elements or on the Common Elements, except such signs as shall have advance written approval by the Board of Directors of the Association, and any such signs required by the Developer.

10.10 Animals. No livestock, animals, chickens or fowl of any kind shall be permitted except dogs, cats and birds owned as domestic pets. No animals shall be kept for commercial purposes. Dogs, cats and birds shall not be kept in such number as to be an annoyance to other unit owners, but in any event, no unit owner shall own more than two (2) dogs and no more than two (2) cats. In addition, no dogs or cats shall be permitted on the condominium property, except inside a unit, without being on a hand leash and under the immediate control of a responsible individual. All such pets must be walked in appropriate areas and each such pet owner shall be responsible for cleaning up after his pet. If any such pet owner fails to properly clean up after his pet, then the Association shall perform such

service and shall bill the pet owner accordingly. The Association shall have the right to adopt and enforce such additional pet regulations as are reasonably necessary to ensure that such pets are not and do not become a nuisance.

10.11 Parking. No trailer, mobile home, automobile, van, house trailer, truck, tractor, commercial vehicle of any kind or other machine, equipment or apparatus, or motorbike, motorcycle or motor scooter (herein collectively referred to as "Vehicles" and individually as a "Vehicle") shall be parked any place on the condominium property other than in the designated parking areas, if any, for the particular type of Vehicle, in accordance with such rules and regulations as may be adopted by the Association from time to time. No such Vehicle that takes up more than one (1) regular parking space shall be permitted on the condominium property. All such Vehicles which are initially designed and manufactured to be self-propelled with an individual engine must be properly painted and in operating condition in order to be parked in any designated parking space, and no designated parking space shall be used as a site to store, repair and/or overhaul any such Vehicle. Parking of boats and boat trailers, if allowed, shall be in accordance with such rules and regulations as may be adopted by the Association from time to time. This restriction, with respect to parking, does not apply to the Developer in the performance of activities authorized by the Declaration and does not apply to commercial vehicles, machines and equipment required to perform construction, maintenance, refurbishing or repair services to a unit or building for the period of time necessary for such construction, maintenance, refurbishing or repair.

10.12 Rules and Regulations. Reasonable rules and regulations concerning the use of the condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners and residents of the condominium upon request.

10.13 Proviso. Provided, however, that until Developer has completed all of the contemplated improvements and closed the sales of all of the units of this condominium, neither the unit owners nor the Association nor the use of the condominium property shall interfere with the completion of all contemplated improvements and the sale of the units, and the Developer may make such use of the unsold units and Common Elements and Limited

Common Elements as may facilitate such completion and sale, including but not limited to, maintenance of a sales office, showing of the property and the display of signs.

10.14 Combining Units. Units may be physically combined into a single dwelling, but they shall nevertheless, for all other pertinent purposes, including - but not limited to, assessments, attribution of Common Elements, and voting, be deemed separate units. Units which had been or are combined to form one dwelling may be severed into their component units (separate units) at any time the owner of the combined unit so desires. Any construction or modification of the interior of such units, as may be required to effectuate the severance of the combined units into separate units, shall be subject to the written approval of the Board of Directors of the Association, which approval shall not be unreasonably withheld. Such modification for the combining or severing of combined units shall in any and all events be accomplished at the sole expense of the unit owner or owners of the combined units and not at the expense of the Association. Nothing herein shall be deemed to require the Association or the Developer to approve any structural modifications of any load-bearing element. Furthermore, nothing herein shall be deemed to require the Association or Developer to approve any modification which will alter the exterior appearance of the condominium building in which the combined unit being severed into its component unit is located or in which the separate units being combined are located. Should the combining of units as described in this paragraph be determined to violate the provisions of F.S. 718.110(4), an Amendment to this Declaration shall be approved, executed and recorded as required by F.S. 718.110(4).

11. **NOTICE OF LIEN OR SUIT.**

11.1 Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

11.2 Notice of Suit. A unit owner shall give notice to the Association of every suit or other proceeding which may affect title to his unit, such notice to be given within five (5) days after the unit owner receives knowledge thereof.

Failure to comply with this Paragraph 11 concerning liens will not affect the validity of any judicial sale.

12. **EASEMENTS.** Except as otherwise set forth in Paragraph 12.12 below, Developer, for itself, its successors, assigns, grantees, nominees, and for the Association, hereby reserves and grants easements, as applicable, on, over, along, under and through the Land of the Condominium as hereinafter set forth. Each of the following easements is a perpetual covenant running with the land of the condominium and notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended use and purpose, and shall survive the termination of the condominium and the exclusion of any lands of the condominium from the condominium.

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

12.2 **Pedestrian and Vehicular Traffic.** For pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist, upon the Common Elements; and for the vehicular traffic over, through and across such portions of the Common Elements as may be from time to time paved and intended for such purposes.

12.3 **Support.** Every portion of a unit contributing to the support of the condominium building or an adjacent unit shall be burdened with an easement of support for the benefit of all other units and Common Elements in the building.

12.4 **Perpetual Non-Exclusive Easement in Common Elements.** The Common Elements shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the owners of units in the condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said owners.

12.5 **Right of Entry into Private Dwelling in Emergencies.** The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a unit to be maintained by the Association pursuant to the Declaration, or as necessary to prevent damage to the Common Elements or to a unit or units. In case of an emergency originating

in or threatening any unit, regardless of whether or not the owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate and to facilitate entry in the event of any such emergency, the owner of each unit, if required by the Association, shall deposit under the control of the Association, a key to such unit.

12.6 Easement for Unintentional and Non-Negligent Encroachments. In the event that any unit shall encroach upon any of the Common Elements for any reason not caused by the purposeful or negligent act of the unit owner or owners, or agents of such owner or owners, then an easement appurtenant to such unit shall exist for the continuance of such encroachment into the Common Elements for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any condominium unit, then an easement shall exist for the continuance of such encroachment of the Common Elements into any unit for so long as such encroachment shall naturally exist.

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

12.8 Easements for Encroachments. Easements for encroachments by the perimeter walls, ceilings and floors surrounding each condominium unit.

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

12.10 Easement for Air Space of Common Elements. An exclusive easement for the use of the area and air space occupied by the air-conditioning compressor and the equipment and fixtures appurtenant thereof, situated in and/or on Common Elements of the condominium, but exclusively serving and individually owned by the owner of the unit as the same exists in and on the land which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air-conditioning compressor, and the equipment and fixtures appurtenant thereto, provided, however, that the removal of same for repair and/or replacement shall not be construed to be a permanent

vacation of the air space which it occupies.

12.11 Developer's Reserved Easements, Easement Rights and Rights of Use and Enjoyment.

12.11.1 Developer, for itself and for its various successors, assigns, grantees, nominees, and future owners of the real properties which are now shown as subsequent Phases II through V, inclusive, of Laguna Pointe Condominiums, reserves the following: a non-exclusive but perpetual ingress, egress and access easement, with or without motor vehicles (including the perpetual right to construct, pave and maintain a road right-of-way); non-exclusive but perpetual utility easements; non-exclusive but perpetual parking easements; and non-exclusive but perpetual storm water drainage easements to and from the designated retention area, with all of the foregoing being on, over, along, under, through and with respect to that portion of the Land of the Condominium (Condominium Parcel) lying South of the most northerly property line of the Condominium Parcel and North of a line lying 266.21 feet South of and parallel to the said North line (which property is a rectangular parcel approximately 100 feet in width [East to West] and approximately 266.21 feet in depth, North to South), and more particularly shown in Exhibits "A" and "A-1" attached to this Declaration, as the "Developer's Reserved Access, Parking, Utility, Drainage and Easement Area", so as to provide access, parking, utilities, sewage, and drainage for the benefit of the property described herein as proposed Phases II through V, inclusive, of Laguna Pointe Condominiums, which property is reflected and described in Exhibit "A-1" attached to this Declaration, in the event that any of the said Phases II through V, inclusive, are not added to the Condominium, but with said properties otherwise being used and developed by Developer or its successors, assigns, grantees, or nominees for other residential or commercial purposes.

Provided, however, that the present and future owner or owners of said reserved easements and rights, shall have a perpetual duty and obligation to pay its or their proportionate share (in proportion to the number of units served by the said property) of all deferred maintenance fees and all actual maintenance costs and repairs for maintaining the paved road right-of-way, the paved parking areas, the

retention area, and the utilities and drainage system located on said property, and the payment of said proportionate fees and costs shall be a condition subsequent to the perpetual right to use such property and such access, parking, drainage and utility easements. In the event of any dispute arising concerning the proper proportionate shares, or pursuant to the terms of this provision, each party shall choose one arbitrator and those two arbitrators shall select one additional arbitrator, and the decision of the majority of the arbitrators shall be binding on all parties, and the rules and regulations of the American Arbitration Association shall apply.

12.11.2 Developer, for itself and for its various successors, assigns, grantees, nominees, and future owners of the real properties which are now shown as subsequent Phases II through V, inclusive, of Laguna Pointe Condominiums, reserves a non-exclusive but perpetual ingress, egress and access easement and easement of use and enjoyment in and to and on, over and across all of the real property known as Phase I of Laguna Pointe Condominiums, as described in Exhibit "A" attached hereto, including, but not limited to, the in-ground swimming pool, the beach and beachfront property, the waterfront and the waters of Big Lagoon/intracoastal waterway, any dock and boat slip facilities, and their replacements, that are actually constructed and provided by the Developer, if any, and to a strip of property comprising the easterly eight feet (8') of the southerly one hundred twenty feet (120') of the Land of the Condominium and a strip of property comprising the westerly eight feet (8') of the southerly one hundred twenty feet (120') of the Land of the Condominium, but excluding the condominium building and that portion of the real property on which the condominium building is constructed and located.

Provided, however, that the present and future owner or owners of said reserved rights, as a condition precedent to their use and enjoyment of such reserved easement rights, shall have a perpetual duty and obligation to pay its or their proportionate share (in proportion to the number of units served by said property) of all deferred maintenance fees and all actual maintenance costs for maintaining and repairing the in-ground pool, the beach and beach area, and the access areas. In the event of any dispute arising concerning the proper proportionate shares, or pursuant

to the terms of this provision, each party shall choose one arbitrator, and those two arbitrators shall select one additional arbitrator, and the decision of the majority of the arbitrators shall be binding on all parties, and the rules and regulations of the American Arbitration Association shall apply.

12.12 Owner of Unit 301's and 302's Reserved Easement, Easement Rights, and Rights of Use and Enjoyment. The Developer hereby reserves for the exclusive benefit of the record owners of Units 301 and 302, and for their various successors, assigns, grantees, nominees, and successors in interest:

12.12.1 A non-exclusive but perpetual easement, for egress and ingress, and easement for use and enjoyment, as applicable, on, over, along, under, and through the Land of the Condominium for the construction, placement, repair, and maintenance of a certain generator identified as the "generator" as located on Exhibit A to this Prospectus, which generator shall be for the exclusive right, enjoyment, and use of the record owners of Units 301 and 302, except as otherwise agreed to in writing by the record owners of Units 301 and 302 and the Association.

12.12.2 A non-exclusive but perpetual floating easement, for ingress and egress, and easement for use and enjoyment, as applicable, on, over, along, under, and through the Land of the Condominium for the construction, placement, repair, and maintenance of certain underground wells and underground and above ground water and distribution lines as deemed reasonably necessary by the record owners of Units 301 and 302, for the exclusive use, right, and enjoyment of a certain geothermal heating and air conditioning system to be owned and operated by the record owners of Units 301 and 302, except as otherwise agreed to in writing by the record owners of Unit 301 and 302 and the Association.

13. ASSOCIATION. In order to provide for the proficient and effective administration of this condominium, each unit owner shall become a member of a non-profit corporation known as LAGUNA POINTE CONDOMINIUM ASSOCIATION OF PENSACOLA, INC., organized under the laws of the State of Florida. The corporation shall administer the operation and management of this condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions and conditions of this Declaration of Condominium, the

Articles of Incorporation and Bylaws of the Association, the Rules and Regulations promulgated by the Association from time to time, and the laws of Florida.

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

13.2 Bylaws. A copy of the Bylaws of the Association is attached hereto as Exhibit "D."

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

13.4 Restraint Upon Assignment of Shares in Assets. The shares of members in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner--except as an appurtenance to a unit.

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

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

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

13.8 Information. The Association shall make available to unit owners and

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

13.9 Financial Statements. Any holder of a first mortgage on any unit shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

13.10 Association's Rights and Restrictions. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project. The Association shall have the right from time to time to enter into management agreements with companies satisfactory to Association to maintain and operate the project.

13.11 Developer's Retention of Control. Developer has the right to retain control of the Association after a majority of the units have been sold as more particularly set forth in the Articles of Incorporation.

13.12 Specific Rights of Institutional Mortgagees. An institutional mortgagee shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year of the Association. Upon written request to the Association identifying the name and address of the institutional mortgagee of any unit, such institutional mortgagee will be entitled to timely written notice of the following:

- (1) Any condemnation, loss or other casualty loss which affects a material portion of the condominium or any unit which is encumbered by a mortgage held by the institutional mortgagee;
- (2) Any delinquency in the payment of assessments or common expenses owed by an owner of a unit subject to a mortgage held by an institutional mortgagee, which remains uncured for a period of sixty (60) days;
- (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and/or
- (4) Any proposed action which would require the consent of a specified percentage of mortgage holders.