

encroaching upon the right of the other unit owners likewise to use the same.

(b) The council of unit owners, board of directors and manager, if any, employed by said board or by the council of unit owners, for themselves, their agents, servants, employees and contractors, shall have the irrevocable right and a perpetual easement to enter any unit, or upon any limited common element appurtenant to any unit, for the purpose of performing any cleaning, maintenance, repair or replacement which the council of unit owners is obligated or entitled to perform, and any inspection related thereto, whether said cleaning, maintenance, repair, replacement or inspection pertains to said unit or limited common element, or to any other unit or common element accessible from the unit or limited common element so entered, whether or not the unit or common element that is the subject of such cleaning, maintenance, repair, replacement or inspection is also accessible from any other unit or common element. Except in cases involving manifest danger to public safety or property, the council of unit owners, board of directors or manager shall make a reasonable effort to give notice to the unit owner who owns the unit, or has the right to use the limited common element, that is to be entered for the purpose of such cleaning, maintenance, repair, replacement or inspection. In cases involving manifest danger to public safety or to property resulting from conditions which are the fault of said unit owner, said unit owner shall be responsible for the prompt repair of any damage inflicted upon said unit or limited common element, or any other portion of the condominium, as a result of such entry; in all other cases, the party making such entry shall be responsible for the prompt repair of such damage.

(c) Each unit owner, in proportion to his percentage interest factor, shall contribute toward payment of the common expenses and no unit owner shall be exempt from contributing toward said common expenses, either by waiver of the use or enjoyment of the common elements, or any thereof, or by the abandonment of his condominium unit. The contribution of each unit owner toward common expenses shall be determined, levied and assessed as a lien, all in the manner set forth in the By-laws, and each unit owner shall be liable for all common expenses levied and assessed against him or his unit, and each installment thereof, falling due while he is the owner of the unit.

(d) Any assessment of common expenses, until paid, together with interest thereon, late charges, actual costs of collection, and reasonable attorney's fees shall constitute a lien on the unit against which it is levied. Such lien shall be prior to all other liens except only (i) tax liens on the unit in favor of the Government of the Virgin Islands, and (ii) all sums unpaid on a first mortgage of record.

ARTICLE V

LIMITED COMMON ELEMENTS

(a) The following limited common elements shall be appurtenant to the units in Stage 1:

(i) The owner of each unit, to the exclusion of the owners of all other units, has the exclusive right to use and enjoy the windows, doors, doorways, gates and gateways furnishing access (A) between his unit and the common elements adjacent thereto, and (B) between each vestibule or gallery appurtenant to his unit and the common elements adjacent to such vestibule or gallery; including the casings, seals, glass, louvers, screens and security grills, if any, of all such windows, doors, doorways, gates and gateways.

(ii) The owner of each unit, to the exclusion of the owners of all other units, has the exclusive right to use and enjoy (A) the vestibule at the entrance to his unit, (B) the wall and ceiling light fixtures, electrical outlets and door chime button, if any, serving said vestibule, (C) the exterior stairway landing adjacent to said vestibule, and (D) the exterior stairway running from said landing upwards or downwards, as the case may be, to the land on the inland (uphill) side of his unit. Each vestibule shall consist of the three dimensional area lying, vertically, between the top surface of the concrete slab under such vestibule, and the upper surface of the wood ceiling above such vestibule, and horizontally, between the innermost surface (vestibule side) of the concrete block masonry layer of each wall enclosing the vestibule, such that the concrete plaster applied to said concrete blocks and the paint applied to said concrete plaster are each part of the vestibule.

(iii) The owner of each unit, to the exclusion of the owners of all other units, has the exclusive right to use and enjoy the gallery or galleries serving his unit, and the wall and ceiling light fixtures and electrical outlets, if any, serving such gallery or galleries. Each such gallery shall consist of the three dimensional area lying, vertically, between (A) the top surface of the concrete slab under such gallery and (B) the bottom surface of the concrete slab, if any, above such gallery, or otherwise, the bottom surface of the plywood base of such gallery's roof, and horizontally, between the exterior surfaces of the sliding glass doors and concrete plaster exterior walls enclosing the unit and the exterior, bay side surfaces of railings and concrete plaster wall on the bay side of such gallery, and between the exterior, gallery side surfaces of the two concrete plaster partition walls separating such gallery from adjacent galleries (the partition walls themselves being general common elements), or if there is only one such partition wall, then between the exterior, gallery side surface of such partition wall and the exterior, non-gallery side surfaces of the railing and

concrete plaster wall on the opposite side of the gallery from such partition wall. The paint applied to each concrete plaster wall is deemed part of such wall.

(iv) The owner of each unit, to the exclusion of the owners of all other units, has the exclusive right to use and enjoy all water lines and other water facilities that exist for the exclusive use of his unit and are located between his unit and the meter that measures the flow of water to his unit.

(v) The owner of each unit, to the exclusion of the owners of all other units, has the exclusive right to use and enjoy all electrical wires and other electrical facilities that exist for the exclusive use of his unit and/or any limited common element(s) appurtenant thereto, and are located (A) between his unit and any such limited common element(s), or (B) between his unit and/or such limited common element(s), on the one hand, and the meter that measures the flow of electricity to his unit and such limited common element(s), on the other hand.

(b) The limited common elements shall also include those common elements, if any, in a subsequent stage that the Developer may designate as limited common elements in the Declaration amendment or condominium plat amendment adding such subsequent stage to the condominium.

#### ARTICLE VI

##### CONDOMINIUM UNITS AND COMMON ELEMENTS

(a) The existing physical boundaries of each unit constructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of variations between existing physical boundaries of the unit and physical boundaries described in the Declaration or those boundaries shown on the condominium plat. However, if any common element, or any part thereof, now or at any time hereafter, encroaches upon any unit, or any unit encroaches upon any common element, or any other unit, whether such encroachment is attributable to or results from construction, settlement, shifting of the building, any fully authorized reconstruction designed to remedy, repair or restore any damage or destruction from fire or other casualty, or from condemnation or eminent domain proceedings, or any other reason whatsoever beyond the control of the council of unit owners and any unit owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, either for the benefit of the council of unit owners or for the unit owner, their respective heirs, personal representatives, successors and assigns, to provide for the encroachment and nondisturbance of the common element, or the unit, as the case may be. Such easement shall remain in full force and effect so long as the encroachment shall

continue and shall be relocated, if necessary, to permit the maintenance of such encroachment wherever found. Additionally, and in all events, an easement for mutual support shall exist in the units and common elements. The conveyance or other disposition of a condominium unit shall be deemed to include and convey, or be subject to, any easement arising under the provisions of this Paragraph (a), without specific or particular reference to such easement.

(b) Except as otherwise provided in this Paragraph (b) and in Article IX hereof, (i) each unit shall be used only as a private residence of the unit owner, his tenants, and the family and guests of each, and (ii) the common elements shall be used only (A) to facilitate the residential use of the units, and (B) to the extent permitted (1) in Subparagraph (b) of Article I hereof, (2) in any Declaration amendment adding a subsequent stage to the condominium, or (3) by the council of unit owners, as recreational facilities or to facilitate the use of recreational facilities located upon the recreational parcel(s). Any unit may be used for daily, weekly, monthly, yearly or other short term or long term residential rentals. Any part of any unit may be used as an office or studio of a lawyer, architect, engineer, artist, accountant, or other professional person, for the practice of such professions, provided that (i) the professional person using such office or studio actually resides in the unit in which such office or studio is located, (ii) such professional person is fully licensed to perform the professional services being rendered, (iii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iv) the operation of such office or studio does not involve the employment of any professional associate or more than one (1) non-resident employee, and (v) such office or studio does not occupy more than twenty-five percent (25%) of the total floor area of such unit. The council of unit owners may use any unit(s) to which it holds fee simple or leasehold title as office space for the management and maintenance of the condominium and to house any person(s) performing management or maintenance services for the condominium.

## ARTICLE VII

### AUTHORITY FOR GRANT OF SPECIFIC EASEMENTS

The council of unit owners shall have the right, power and authority to grant any easement, right-of-way, license, lease or similar interest affecting the common elements of the condominium, if the grant is approved by the affirmative vote of unit owners having at least sixty-six and two-thirds percent (66 2/3%) of the votes appurtenant to all units, provided that if the grant affects any limited common element, such grant shall also require the express written consent of all unit owners having the right to use such limited common element, and of all mortgagees holding an interest in the units to which such limited common element is appurtenant. Any easement, right-of-way, license,

lease or similar interest granted by the council of unit owners pursuant to this Article VII shall state that the grant was approved (a) by unit owners having at least sixty-six and two-thirds percent (66 2/3%) of the votes, and (b) if appropriate, by all unit owners having the right to use any limited common element affected by the easement, and by the corresponding mortgagees.

### ARTICLE VIII

#### AUTHORITY FOR EXPANSION OF THE CONDOMINIUM

(a) The Developer hereby expressly reserves, for a period of twenty (20) years from and after the date upon which the condominium is created, the right to expand and add to the condominium by subjecting to the condominium regime, in one or more subsequent stages, the real property described as follows:

Land. The land to be added to the condominium is all or any part(s) of those two plots of ground, located on the island of St. Croix in the U.S. Virgin Islands, and more particularly described as follows:

Beginning for the first plot at the southwest corner of Plot 64-A of Estate Mount Welcome, proceed in a northeasterly direction on a bearing N 79°14'31" E, 119.72 feet; thence S 10°45'29" E, 5.78 feet; thence S 78°31' E, 38.54 feet; thence N 11°29' E, 22.00 feet; thence N 11°29' E, 38.00 feet; thence S 44°16' E, 25.00 feet; thence S 44°16' E, 258.40 feet; thence N 64°17' E, 304.80 feet; thence N 4°12'52" W, 215.94 feet; thence N 5°06' W, 45.90 feet; thence N 5°06' W, 110.28 feet; thence N 5°06' W, 109.22 feet; thence N 70°39' W, 123.25 feet; thence N 70°39' W, 20.95 feet; thence N 14°40' W, 71.30 feet; thence N 48°33'21" E, 113.67 feet; thence S 41°26'39" E, 599.04 feet; thence S 10°47' W, 14.68 feet; thence S 10°47' W, 159.97 feet; thence S 8°28' E, 137.76 feet; thence S 28°32' W, 119.47 feet; thence S 28°32' W, 137.40 feet; thence S 69°44' W, 49.90 feet; thence S 69°44' W, 22.80 feet; thence N 85°36' W, 223.30 feet; thence N 65°48' W, 389.60 feet; thence S 57°17' W, 20.00 feet; thence S 57°17' W, 102.70 feet; thence N 11°01' W, 232.70 feet, to the point of beginning; containing 7.9318 acres, more or less, being the plot shown and designated as "Plot 64" on Sheet 3 of the condominium plat.

Beginning for the second plot at the northeast corner of Plot 39-A of Estate Mount Welcome, proceed in a southeasterly direction on a bearing S 05°06' E, 109.22 feet; thence N 40°06'01" W, 195.61 feet; thence S 70°39' E, 123.25 feet, to the point of beginning; containing 0.1414 acres, more or less, being the plot shown and designated as "Plot 39-AA" on Sheet 3 of the condominium plat.

Plots 64 and 39-AA are herein collectively called "Parcel 2".

Buildings. The buildings to be added to the condominium shall consist of up to fifteen (15) residential structures.

(b) In addition to the above specified land and buildings, the property to be subjected to the condominium as part of each subsequent stage may include all structures, fixtures and other improvements erected upon or within the land and buildings contained within said stage, and all rights, ways, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining. Each subsequent stage may be added to the condominium subject to the rights, rights-of-way, covenants, conditions, restrictions, setbacks and easements mentioned in Paragraphs (b) and (d) of Article I of this Declaration, and to such other rights, rights-of-way, covenants, conditions, restrictions, setbacks and easements deemed necessary or advisable in the opinion of the Developer to facilitate the orderly development, or the construction, operation and maintenance, of the condominium, any recreational parcel(s), or the remaining property of the Developer, whether or not located within Parcel 2, or the convenience or services of the council of unit owners or the recreation association; and, in particular, but not in limitation of the foregoing, the Developer shall have the right to reserve, at or prior to the time each subsequent stage is added to the condominium, such easements and rights-of-way on, over, under and across such subsequent stage as are deemed appropriate by the Developer for (i) vehicular and pedestrian access between (A) any recreational parcel or the remaining property of the Developer, whether or not included within Parcel 2, on the one hand, and (B) any public road or other property which borders upon the condominium, on the other hand, (ii) vehicular parking for the benefit of any recreational parcel(s) or any remaining property of the Developer, whether or not included within Parcel 2, and (iii) the construction, installation, use, operation and maintenance (including, but not limited to, inspection, cleaning, repair and replacement) of water, sanitary sewer, storm water drainage, telephone, electric, gas, cable TV, and other utility lines, mains, facilities and installations deemed appropriate by the Developer to serve any recreational parcel(s) or any remaining property of the Developer, whether or not included within

Parcel 2. Each such right, right-of-way, covenant, condition, restriction, setback and easement shall run with and bind the common elements and each unit contained in the condominium, and all owners and occupants of such units, and their respective heirs, personal representatives, successors and assigns, forever, unless the recorded document establishing such right, right-of-way, covenant, condition, restriction, setback or easement specifically provides otherwise.

(c) Subject to the limitations of Paragraphs (a) and (d) of this Article VIII:

(i) all buildings and other improvements included in each subsequent stage shall be constructed in accordance with such drawings and specifications as the Developer, in its sole discretion, may deem appropriate;

(ii) in addition to the land and buildings set forth in Paragraph (a) of this Article III, each subsequent stage may contain common elements of the kind set forth in Paragraph (g) of Article I hereof, and such other common elements as the Developer, in its sole discretion, may deem appropriate, including, without limitation, space for the housing of any person(s) performing management or maintenance services for the condominium;

(iii) the Developer is not required to add any subsequent stage to the condominium, and the subsequent stages, if any, which are added to the condominium may be added in any sequence chosen by the Developer;

(iv) the total number of units added to the condominium in subsequent stages shall not exceed sixty-eight (68) (i.e., the total number of units in all stages of the condominium shall not exceed ninety-four (94)); and

(v) The Developer is not required to construct or install any recreational improvements upon Parcel 2 or to convey any portion of Parcel 2 to the recreation association, and any portion of Parcel 2 upon which the Developer constructs or installs recreational improvements may be conveyed to the recreation association, added to the condominium, retained by the Developer or otherwise disposed of by the Developer.

(d) All improvements that are added by the Developer to the condominium as part of any subsequent stage shall be substantially complete prior to the addition of such subsequent stage to the condominium, and shall be consistent with comparable improvements, if any, installed by the Developer in Stage 1 of the condominium in terms of quality of construction.

(e) Immediately upon the addition of any subsequent stage to the condominium, (i) the percentage interest factor and number of votes appurtenant to each unit contained within the

condominium immediately prior to such expansion shall be reduced in accordance with the respective formulae therefor which are set forth in Article III hereof, and (ii) each unit contained within the subsequent stage then being added to the condominium shall be vested with a percentage interest factor and number of votes which are determined in accordance with the respective formulae therefor set forth in Article III hereof. Immediately following any such expansion, the interest of each mortgagee shall attach, by operation of law, to the new percentage interest in the common elements appurtenant to the unit on which it holds a lien.

(f) Subject to the foregoing, expansion of the condominium shall be effected by the Developer (without need for the approval of any unit owner or mortgagee) by recordation in the Office of the Recorder of Deeds for St. Croix of the following: (i) an amendment to the Declaration describing the property then being added to the condominium, the new percentage interest factor and number of votes appurtenant to each unit in the condominium as expanded; and (ii) an amendment to the condominium plat which includes the same detail and information concerning the property then being added to the condominium as was required to be shown for the property originally subjected to this condominium regime. In such Declaration amendment, the Developer may (i) identify each building included within said subsequent stage and describe the drawings and specifications therefor, (ii) identify, and define the boundaries of, each unit included within said subsequent stage, (iii) designate each common element included within said subsequent stage as a general common element, or as a limited common element restricted to the use of one or more, but less than all, unit owners, (iv) allocate the responsibilities for the cleaning, maintenance, repair and replacement of each such common element and unit to the council of unit owners and/or the respective unit owners, and provide to the council of unit owners and the respective unit owners such easements and rights as the Developer, in its sole discretion, may deem appropriate to facilitate the carrying out of such responsibilities, and (v) include such other provisions as are required or permitted by the Condominium Act, this Declaration and the By-laws.

(g) If all or any part(s) of Parcel 2 is/are not added to the condominium, such property may be developed in any manner and to any density that the Developer, in its sole discretion, may deem appropriate, except that (i) the total number of dwelling units constructed on Parcel 2 shall not exceed sixty-eight (68), and (ii) no bar or restaurant facilities shall be constructed on Parcel 2.

(h) The Developer hereby grants to the unit owners and the council of unit owners (collectively, the "Licensees") a non-exclusive license to use the term "Schooner Bay" solely to identify the condominium hereby established. The Licensees shall not sell, assign or sub-license the use of said term to any other party. The term "Schooner Bay" may be used or licensed or both,



under any terms acceptable to the Developer, by the Developer at any time and for any purpose. The Licensees have no right against the Developer to complain of any such use or license, regardless of the proximity or similarity of use of the term "Schooner Bay" or any version(s) or variation(s) thereof by the Developer or its direct or indirect licensees.

## ARTICLE IX

### DEVELOPMENT, MARKETING AND MANAGEMENT OF THE SCHOONER BAY DEVELOPMENT AREA

(a) The Developer shall have the right to use any unit(s) to which it holds fee simple or leasehold title from time to time as sales, rental and management offices and model units and for such other uses as the Developer may deem appropriate for the development, marketing (including sales and rentals) and management of the condominium and all other portions of the Schooner Bay development area. The Developer shall have the right to make such structural and non-structural additions, alterations, improvements and decorations to such unit(s), to the limited common elements that the Developer, as the owner or tenant of each such unit, has the exclusive right to use, and to the party wall located between any adjoining units to which the Developer holds fee simple or leasehold title, as the Developer, in its sole discretion, may deem appropriate to facilitate the uses hereinabove set forth.

(b) The Developer and its employees, agents and guests shall have the right to park and store in the condominium parking spaces such commercial and non-commercial vehicles as the Developer, in its sole discretion, may deem appropriate for the development, marketing and management of the condominium and all other portions of the Schooner Bay development area, provided, however, that the Developer shall not unreasonably interfere with the rights of the other unit owners having the right to use such spaces.

(c) The Developer shall have the right to erect upon, maintain and remove from the unit(s) to which it holds fee simple or leasehold title, the limited common elements appurtenant to said unit(s), and all general common elements, such advertising and directional signs and other materials as the Developer, in its sole discretion, may deem appropriate for the development, marketing and management of the condominium and all other portions of the Schooner Bay development area.

(d) The Developer shall have the right and an easement to enter upon any general or limited common element and any unit for the purpose of (i) completing the construction or installation of any unit or common element, or of any recreational facility located upon a recreational parcel, and (ii) making repairs to any unit or common element, or recreational facility, to the extent

that such repairs are required pursuant to any express or implied warranty or other legal obligation created or agreed to by the Developer or established by the operation of law. Such right and easement shall exist, with respect to item (i) above, until the construction or installation of all units and common elements, and recreational facilities, that the Developer desires, or is obligated, to construct or install has been completed, and, with respect to item (ii) above, so long as the Developer's obligation shall exist.

## ARTICLE X

### GENERAL PROVISIONS

The Condominium Regime established by this Declaration shall be subject to the following:

(a) The administration of the condominium shall be governed by the By-laws, which shall not be amended without the affirmative vote of unit owners having at least two-thirds (2/3) of the votes appurtenant to all units, provided that any amendment to the By-laws involving any "material change", as said term is defined below, shall also require the approval of each construction mortgagee and the affirmative vote of a majority of the eligible mortgagees (as such term is defined in Article I of this Declaration), each such eligible mortgagee to have the number of votes appurtenant to the unit or units upon which it holds a mortgage or mortgages. The term "material change" shall include a change to any of the following:

(i) voting rights (except for a reallocation of voting rights in connection with the expansion of the condominium pursuant to Article VIII hereof, in connection with the failure to rebuild a unit following a casualty pursuant to Paragraph (c) of this Article X, or in connection with the condemnation of part of the condominium pursuant to Paragraph (e) of this Article X);

(ii) assessments, assessment liens, or subordination of assessment liens;

(iii) reserves for maintenance, repair and replacement of common areas;

(iv) responsibility for maintenance and repairs;

(v) reallocation of interests in the general or limited common areas, or rights to their use (except for a reallocation of percentage interest in the common elements in connection with the expansion of the condominium pursuant to Article VIII hereof, in connection with the failure to rebuild a unit following a casualty pursuant to Paragraph (c) of this Article X, or in connection with the condemnation of part of the condominium pursuant to Paragraph (e) of this Article X);

- (vi) boundaries of any unit;
- (vii) convertibility of units into common areas or vice versa;
- (viii) expansion or contraction of the condominium project, or the addition, annexation or withdrawal of property to or from the condominium project (except for the expansion of the condominium pursuant to Article VIII hereof);
- (ix) insurance or fidelity bonds;
- (x) leasing of units;
- (xi) imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;
- (xii) a decision by the council of unit owners to establish self management when professional management had been required previously by any eligible mortgagee;
- (xiii) restoration or repair of the condominium project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration or By-laws;
- (xiv) any action to terminate the condominium regime after substantial destruction or condemnation occurs; and
- (xv) any provisions that expressly benefit mortgage holders, insurers or guarantors.

A "material change" shall also include any other change judged to be material by any construction mortgagee or any eligible mortgagee; provided that if a proposed amendment of the By-laws does not involve any change described in items (i) through (xv) above, each construction mortgagee or eligible mortgagee who fails to submit to the council of unit owners a written response to the proposed amendment within thirty (30) days after such construction mortgagee or eligible mortgagee is given written notice of the proposed amendment shall be deemed to have judged all changes resulting from the proposed amendment to be immaterial, and to have approved, and cast an affirmative vote with respect to, the proposed amendment.

(b) (i) Except as provided in Article VIII hereof with respect to the expansion of the condominium by the Developer, in Paragraph (c) of this Article X with respect to a failure to rebuild a unit following a casualty, and in Paragraph (e) of this Article X with respect to a condemnation of part of the condominium, amendments to this Declaration and the condominium plat shall be governed as follows:

(A) Except as provided in item (B) below, neither this Declaration nor the condominium plat shall be amended without (1) the written consent of unit owners having at least eighty percent (80%) of the votes appurtenant to all units, (2) the affirmative vote of at least eighty percent (80%) of the eligible mortgagees, each such eligible mortgagee to have the number of votes appurtenant to the unit or units upon which it holds a mortgage or mortgages, and (3) the written consent of each construction mortgagee, and no amendment adopted pursuant to this item (A) shall take effect until an appropriate written instrument is recorded in the Office of the Recorder of Deeds for St. Croix, which instrument shall be executed by the unit owners, eligible mortgagees and construction mortgagees whose approval was required for the adoption of such amendment.

(B) Neither this Declaration nor the condominium plat shall be amended so as to change:

- (1) the boundaries of any unit,
- (2) the undivided percentage interest of any unit owner in the common elements,
- (3) the percentage interest of any unit owner in the common profits and common expenses,
- (4) the number of votes in the council of unit owners appurtenant to any unit,
- (5) residential units to non-residential units, or non-residential units to residential units,
- (6) general common elements to limited common elements, or limited common elements to general common elements, or
- (7) any right of any unit owner pertaining to the use of any limited common element appurtenant to his or her unit,

without the written consent of every unit owner, mortgagee and construction mortgagee, and no amendment adopted pursuant to this item (B) shall take effect until an appropriate written instrument is recorded among the Land Records of St. Croix, which instrument shall be executed by every unit owner, mortgagee and construction mortgagee.

(ii) Furthermore, this Declaration, the By-laws and the condominium plat shall not be amended so as to change:

(A) any right expressly reserved for the benefit of the Developer, including, but not limited to, the easements reserved by the Developer in Paragraph (b) of Article I hereof, the Developer's right to expand the condominium as provided in Article VIII hereof, the Developer's right to develop, market and manage the Schooner Bay development area as provided in Article IX hereof, and the Developer's right to control the operation of the council of unit owners and board of directors during the developer control period as provided in Articles III and IV of the By-laws,

(B) any provision required by any governmental authority, or

(C) any provision provided for the benefit of any public utility,

without the written consent of the Developer, such governmental authority or such public utility, as applicable, and no such amendment shall take effect until an appropriate written instrument is recorded in the Office of the Recorder of Deeds for St. Croix, which instrument shall be executed by the Developer, such governmental authority or such public utility, as applicable.

(c) If the council of unit owners is precluded by law (as provided in item (ii) of Subsection 2(a) of Article XI of the By-laws) from rebuilding any unit which is substantially destroyed (i.e., made permanently uninhabitable) by a fire or other casualty, but the condominium regime is not terminated, then:

(i) the percentage interest factor appurtenant to each substantially destroyed unit which is not rebuilt shall be divested from the unit and reallocated among the remaining units in proportion to the percentage interest factors appurtenant to said remaining units immediately prior to the fire or other casualty; and

(ii) the council of unit owners promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocation of percentage interest factors.

(d) Notwithstanding any other provision of this Declaration, if the condominium is destroyed or damaged to the extent of at least two-thirds (2/3) of its then replacement cost, the condominium may be terminated by the affirmative votes of (i) unit owners having at least eighty percent (80%) of the votes appurtenant to all units, (ii) at least eighty percent (80%) of the eligible mortgagees, each such eligible mortgagee to have the number of votes appurtenant to the unit or units upon which it

holds a mortgage or mortgages, and (iii) all construction mortgagees, provided that such affirmative votes are cast within sixty (60) days after the date such destruction or damage occurs. Upon such termination, the property shall be sold and the net proceeds of sale and the net proceeds of insurance shall be combined into one fund, which shall be distributed among all the unit owners in accordance with their respective undivided interests in the property as tenants in common, as determined pursuant to Paragraph (g) of this Article X.

(e) The council of unit owners shall represent the unit owners in any condemnation proceeding (for the purposes of this Declaration, a condemnation includes any sale in settlement of a pending or threatened condemnation) to the extent said condemnation pertains to all or any part of the general common elements, except that each unit owner shall be entitled to assert a separate claim for the consequential damages to his unit resulting from said condemnation. Any award made in connection with the condemnation of all or any part of the condominium, including the net proceeds of any sale in settlement of a condemnation proceeding, shall be allocated among the unit owners as follows: (i) each unit owner shall be entitled to the entire award for the taking of all or part of his unit and for the consequential damages to said unit resulting from said condemnation; (ii) any award for the taking of any limited common element shall be allocated among the unit owners having the right to use said limited common element in proportion to their respective percentage interests in the common elements; and (iii) any award for the taking of general common elements shall be allocated among all unit owners in proportion to their respective percentage interests in the common elements. All such awards shall be payable to the council of unit owners, which shall distribute the amount(s) allocated to each unit owner pursuant to the preceding sentence in accordance with the priority of interests in his unit, to the end and intent that all mortgages and other liens on such unit shall first be paid out of the award allocated to such unit owner, all in the order in which same appear. The council of unit owners shall not be obligated to replace property taken, but promptly shall undertake to restore the remaining property to a safe and habitable condition. The cost of such restoration shall be a common expense. Following the taking of all or part of any unit, the common element percentage interest appurtenant to said unit shall be reduced in the same proportion as the amount of floor area of said unit so taken bears to the floor area of said unit immediately prior to the taking, except that if the taking specifically includes part or all of the common element percentage interest appurtenant to said unit, the taking authority shall have the portion of said percentage interest which is so taken, and the owner of said unit shall retain the portion of said percentage interest which is not so taken. To the extent that the total percentage interest appurtenant to a unit is reduced as above provided, rather than being split between the taking authority and the unit owner, the

severed percentage interest shall be reallocated among the remaining units in proportion to the percentage interests appurtenant to such units immediately prior to the taking. Following the taking of part of a unit, the percentage interest in the common expenses and common profits, and the number of votes, appurtenant to that unit shall be reallocated in the same manner as the common element percentage interest appurtenant to that unit is reallocated. Promptly after the taking is effected, the council of unit owners shall prepare, execute and record an amendment to this Declaration reflecting the new arrangement of percentage interests and votes as above provided.

(f) Except as otherwise provided in Paragraph (d) of this Article X, (i) the condominium shall not be terminated without the written consent of every unit owner, mortgagee and construction mortgagee, and (ii) no termination implemented pursuant to item (i) of this Paragraph (f) shall take effect until an appropriate written instrument executed by all unit owners, mortgagees and construction mortgagees is recorded in the Office of the Recorder of Deeds for St. Croix. No termination implemented pursuant to Paragraph (d) of this Article X shall take effect until an appropriate written instrument executed by (A) unit owners having at least eighty percent (80%) of the votes appurtenant to all units, (B) at least eighty percent (80%) of the mortgagees, as determined under said Paragraph (d), and (C) all construction mortgagees, is recorded in the Office of the Recorder of Deeds for St. Croix.

(g) Upon any termination of the condominium regime:

(i) Each unit owner shall own, as a tenant in common, from the time the condominium is terminated until the time the property is sold, an undivided interest in the property equal to his percentage interest in the common elements immediately prior to the termination of the condominium.

(ii) So long as the tenancy in common exists, each unit owner and his successors in interest shall have the exclusive right to occupy the portion of the property that formerly constituted his unit, and shall retain all rights which he had immediately prior to the termination of the condominium with respect to those portions of the property that formerly constituted limited common elements.

(iii) Each unit owner's share of any proceeds, including, without limitation, sales proceeds, insurance proceeds and taking awards, distributed to the unit owners upon or in connection with the termination of the condominium shall be distributed in accordance with the priority of interests in such unit, to the end and intent that all mortgages and other liens on such unit shall first be paid out of the proceeds payable to such unit owner, all in the order in which same appear.

(h) The agent for service of process shall be C. Peter Behringer, whose business address is Antilles Investment Corporation, Suite 11, Caravelle Arcade, Christiansted, St. Croix, U.S. Virgin Islands 00820.

(i) The failure of the council of unit owners, or any unit owner, or the board of directors, or the manager, in any one or more instances, to enforce or otherwise insist upon the strict performance of any restriction, condition, obligation or provision of this Declaration or the failure of any such party to exercise any right, shall not be construed as a waiver or relinquishment for the future, whether in the same or in any other instance, of the benefit of such restriction, condition, obligation, provision or right, but the same shall remain in full force and effect unless expressly waived in writing.

(j) The terms, conditions, restrictions and provisions of this Declaration, and the By-laws, shall be binding upon the Developer, its successors and assigns, all as part of a general plan or scheme for development of the condominium, and all said terms, conditions, restrictions and provisions shall be held and construed to run with and bind the property, each condominium unit thereon, and all subsequent owners and occupants of the units, except as otherwise expressly set forth in this Declaration or the By-laws. All of said terms, conditions, restrictions and provisions shall inure to the benefit of and be enforceable by the Developer, its successors and assigns, and by any person or party then owning or having any recorded interest or estate in any condominium unit, against any one violating or attempting to violate any of such terms, conditions, restrictions or provisions, provided, however, that, except as otherwise expressly provided herein, all rights reserved by and for the benefit of the Developer under this Declaration and the By-laws shall be exercisable and enforceable only by the Developer, its successors, and any assignee to whom the Developer specifically assigns such rights in writing.

(k) Nothing contained in this Declaration or the By-laws shall be deemed or construed by any unit owner, nor by any third party, as creating the relationship of principal and agent, partnership or joint venture between the unit owners or any of them. Further, no provisions contained in this Declaration or the By-laws shall be deemed to create any relationship between any unit owners other than the relationship expressly created under a condominium regime, nor to confer upon a unit owner any interest in any other unit owner's condominium unit, nor to create any responsibility whatsoever on a unit owner for any debt, liability or obligation of any other unit owner.

(l) If any term, condition, restriction or provision of this Declaration or the application thereof to any person or circumstance shall, at any time or to any extent, be held to be invalid or unenforceable, the validity and enforceability of the



remainder of this Declaration, or the application of such term, condition, restriction or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, condition, restriction and provision of this Declaration shall be valid and be enforced to the fullest extent permitted by law.

(m) In the event of any conflict among the provisions of this Declaration, the condominium plat or the By-Laws, the provisions of each shall control in the succession hereinbefore listed in this Paragraph (m), commencing with this Declaration.

WITNESS the hand of the Developer as of the day and year first above written.

WITNESS:

ANTILLES INVESTMENT CORPORATION

W

By: CPB  
C. Peter Behringer, President

W

ATTEST: Susan B. Gastress  
Secretary

TERRITORY OF THE VIRGIN ISLANDS

JUDICIAL DIVISION OF

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by C. Peter Behringer, President of Antilles Investment Corporation, a U.S. Virgin Islands corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public