

2.33 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

**Section 3: Description of Condominium**

3.1 Identification of Units. The Condominium shall contain 64 Units. Each Unit in the Condominium shall be identified by a separate numerical designation as shown on the Condominium Plat, which exists as Exhibit No. 1 hereto, and which consists of a survey of the Land, a graphic description of the improvements located thereon (including the Units and the Building in which the Units are located), and a plot plan thereof. The Condominium Plat, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions, in accordance with the requirements of Section 718.104(4)(e), Florida Statutes. 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 the Limited Common Elements for such Unit; (c) an exclusive easement for the use of the air space 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 air space 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 or the Act.

Time-share estates or interests will not be created with respect to any of the Units in the Condominium.

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

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the Condominium Plat extended to their intersections with each other and with the upper and lower boundaries.

(c) Interior Walls. No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

(d) Additional Items Included within the Units. To the extent the following items exist for the use of a Unit, such items shall be considered to be a part of the Unit, regardless of whether or not such item in whole or in part exists within the physical boundaries described above:

(i) all kitchen items and fixtures, including, but not necessarily limited to, ovens, refrigerators, freezers, trash compactors, sinks, ranges, cabinets, dishwashers and exhaust fans;

(ii) all bathroom and plumbing fixtures, including, but not necessarily limited to, sinks, tubs, showers, toilets, vanities, bidets, exhaust fans and medicine or other related storage cabinets;

(iii) all electrical and lighting fixtures, including, but not necessarily limited to, outlets, switches, lamps, bulbs, outlet, switch and control boxes, telephone outlets, circuit breakers, cable television or other communications jacks or outlets, circuit breakers and circuit breaker panels;

(iv) all clothes washers and dryers, water heaters, heating equipment and air conditioning equipment which serve a Unit; and

(v) all pipes, ducts, wiring, facilities, cables and conduits of any kind, nature or type which service a particular Unit.

Any utility lines which are located within a Unit and which provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries. If a wall or roof surface overhangs or part of a Unit encroaches onto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

Notwithstanding the fact that no Unit may be divided or partitioned for purposes of sale or lease, a Unit may be combined with the laterally-adjacent Unit or the Unit lying directly above or beneath a particular Unit in order to permit occupancy of such areas as one residential living space. Such a combination of Units shall be for purposes of occupancy and use only and shall not be deemed an amendment to this Declaration. Further, any such combination shall not materially alter or modify the configuration or size of a Unit.

(e) Permitted Improvements. All Units shall be either one-story or two-story and shall constitute a single residence for purposes of occupancy.

### 3.3 Limited Common Elements.

(a) Definition of Limited Common Elements. To the extent applicable and subject to the provisions of this Declaration, each Unit shall have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, the following:

(i) any area(s) labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit, such as, but not necessarily limited to, balconies and lanais;

(ii) 2 parking spaces as contained in the garage area(s) located in the Building; provided, however, that if enclosed two-car garages are available, each penthouse Unit (designated as Units PH-1901, PH-1903, PH-1904, and PH-2003) shall have one enclosed 2 car garage. The assignment of parking spaces and garages shall be made by the Developer in its sole discretion. If desired by a Unit Owner, the Limited Common Element parking spaces appurtenant to such Owner's Unit may be used for the parking of golf carts. Further information pertaining to Limited Common Element parking spaces is contained in Section 25.7 hereof;

(iii) the structure(s) located on a portion of the Building on which is located any air-conditioning equipment which serves the Unit;

(iv) one air-conditioned storage locker contained within the Building, as assigned by the Developer in its sole discretion; and

(v) the mailbox which exclusively serves a Unit.

(b) Maintenance of Limited Common Elements. The Limited Common Elements shall be maintained, repaired or replaced by the Association as part of the Common Expenses; provided, however, that:

(i) each respective Unit Owner may utilize the portions of the balconies and lanais which are constructed adjacent to and connected with a Unit for the exclusive use of such Unit Owner, and such Unit Owners shall be responsible for (1) all structures pertaining thereto and (2) the maintenance of all items placed within such balconies and lanais by such Unit Owner;

(ii) with regard to all balconies or lanais located on the rear side of the Building which contain screening and structures associated therewith, the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all portions of such screening and the structures associated therewith in accordance with the rules and regulations of the Association;

(iii) if applicable, with regard to Limited Common Element garage areas assigned to the penthouse Units as described in Section 3.3(a) hereof, each such Unit Owner shall maintain the interior portions of the garage area which are permanently assigned for the exclusive use of the Unit Owner in accordance with any rules and regulations of the Association and as follows:

(1) each Unit Owner shall be responsible to maintain, repair and replace all portions of such garage area bounded as follows:

a. the volumes of space enclosed by the unfinished inner surfaces of perimeter walls, and floors thereof, and the ceiling planes of such garage area, including vents, interior doors, windows and such other structural elements as are ordinarily considered to be enclosures of space;

b. all dividing walls and partitions (including the space occupied by such interior walls and partitions) located within such garage area, excepting load-bearing interior walls and partitions; and

c. the decorated inner surfaces of the perimeter and interior walls (including decorated inner surfaces of all interior load-bearing walls), ceilings and floors consisting of wallpaper, paint, plaster, carpeting, tiles, and all other finishing materials affixed or installed as part of the physical structure of the garage area;

(2) no installations (including, but not limited to, construction or installation of shelving or installation of freezer equipment) may be made by a Unit Owner without the prior written consent of the Board of Directors or an architectural control committee created by the Board of Directors pursuant to the By-Laws;

(3) the Unit Owner shall be solely responsible for the maintenance, repair and replacement of the automatic garage door opener which is designed to provide access to and from such garage area for automobiles and all equipment and appurtenances related thereto (for purposes of reference herein, the Unit Owner shall be the owner of such automatic garage door opener regardless of the fact that such opener may not be located within the physical boundaries of the Unit);

(4) the Unit Owner shall be solely responsible for the maintenance of all installations and tracks upon which the garage door will rise in order to provide ingress and egress to and from the garage area for automobiles and all equipment and appurtenances related thereto;

(5) the Unit Owner shall be solely responsible for the maintenance, repair, replacement and reconstruction of all doorways leading from any portion of the Condominium Property to the garage area, which responsibility shall include, but shall not be limited to, the maintenance of all locks contained therein; provided, however, that no Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of the garage door through which automobiles enter the garage areas, unless such maintenance, repair, replacement, or reconstruction is the result of an action or nonaction (other than involving ordinary and normal use) by the Unit Owner or such Unit Owner's guest, licensee, invitee or tenant, and a Unit Owner shall not be responsible for the painting of the entry door leading from the garage area to the general Common Elements;

(6) the Unit Owner shall be solely responsible for the payment of all costs for providing electric service to the garage area which are permanently assigned to the Unit Owner for such Unit Owner's exclusive use, and shall be solely responsible for the maintenance, repair, replacement and reconstruction of all installations related thereto; and

(iv) each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air-conditioning equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference herein, the Unit Owner shall be the owner of all such air-conditioning equipment and all wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

Should any maintenance, repair or replacement of a portion of the Limited Common Elements which is the responsibility of the Association be caused by the lessees, servants, guests, invitees or licensees of a Unit Owner, then such Unit Owner shall be responsible therefor and the Association shall have the right to levy a fine against the Owner of such Unit.

(c) Specific Provisions Pertaining to Balconies on the Front Side of the Building.

With regard to all balconies or lanais located on the front side of the Building, no such balconies shall be permitted to be screened or otherwise enclosed, it being the Developer's intention to maintain a uniform appearance on the exterior of the Building and with other condominium projects developed by the Developer within The Colony. The provisions of this subsection shall not be amended, modified or terminated without the prior written consent of the Developer for so long as the Developer owns any real property within the Colony; upon such time as the Developer no longer owns any real property within the Colony, the prior written consent of The Foundation shall be required for any amendment, modification or termination of the provisions of this subsection.

3.4 Easements. In addition to any easements previously recorded in the public records of the County, or easements created under the Act or other sections of this Declaration, the following easements are hereby created or reserved:

(a) There shall be an easement of support in every portion of a Unit which contributes to the support of any other Unit or Common Element or Limited Common Element.

(b) Easements are hereby created over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements, provided that such easements do not interfere with the residential use of the Units.

(c) Easements are hereby reserved unto the Developer and to the respective utility providers under, through, across and over the Condominium Property as may be required from time to time for the construction, use, maintenance and operation of all utilities (whether public or private), cable television systems, communications and security systems, and other services which may serve the Condominium, with the power to relocate any such existing easements in any portion of the Condominium Property and/or the Association Property; provided, however, that these easements shall not permanently interfere with the residential use of the Units. Such easements created under this subsection are hereby granted to the Association with the power of assignment.

(d) An easement is reserved unto the Developer and granted to the County and their respective agencies and other applicable governmental agencies over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities; provided, however, that the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Condominium Property. This obligation shall run with the land as do other provisions of the Declaration, and any Unit Owner may enforce this covenant and will be entitled to costs and fees, pursuant to Section 20.3 of the Declaration, which result from such enforcement.

(e) If: (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) 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; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

(f) An easement in favor of each Unit Owner and resident shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this

subsection shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

(g) The Developer shall have the right, in its sole discretion from time to time, to enter the Condominium Property and to take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so; provided, however, that the easements created under this subsection shall not interfere with the residential use of the Units or the reasonable use of the Condominium Property.

(h) An easement is hereby reserved to the Developer, and is granted to the Association with the power to assign, over, under, upon and through the Condominium Property as may become necessary for the purposes of access to, constructing or maintaining improvements upon, providing utility access to or across, or providing drainage to or from the Condominium Property, any other lands which are now a part or which may become a part of The Colony Golf & Bay Club development ("The Colony"), or other lands adjacent to The Colony; provided, however, that the easements created under this subsection shall not interfere with the residential use of the Units or the reasonable use of the Condominium Property. Neither the Unit Owners nor the Association, nor their use of the Condominium Property, shall interfere in any way with the Developer's completion and sale of Units or other lands located within The Colony.

(i) Easements are hereby created over, under, across, in and through the Condominium Property as part of The Colony for the purposes of the Developer, the Association and other appropriate entities to enable each respective entity to act upon and carry out its rights and duties, expressed or implied, pursuant to this Declaration and its exhibits, and to facilitate such other actions by appropriate parties as may be reasonably necessary to further the advancement of the Condominium and The Colony.

(j) All dividing walls which straddle the boundary line between Units and which stand partly upon one Unit and partly upon another, and all walls which serve 2 or more Units or the permitted improvements located within said Units, shall at all times be considered party walls, and each of the Owners of Units within which such party walls shall stand, serve or benefit shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for support of the permitted improvements located within said Units, and for the support of any building, constructed to replace the same, and shall have the right to maintain in or on said wall, any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained:

(i) No Owner of any Unit nor any successor in interest to any such Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

(ii) In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Owner of any Unit upon which said party wall may rest shall have the obligation to repair or build such wall and the Owner of each Unit upon which such wall shall rest, be served or benefitted by shall pay his fractional portion of the cost of such repair or rebuilding. All such repairs or rebuilding shall be done within a reasonable time, and in such workmanlike manner with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

(iii) The foregoing provisions of this subsection (j) notwithstanding, the owner of any Unit, or other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Unit Owner, or other interested party, to contribution from any other Unit Owner under this section, shall be appurtenant to the land and shall pass to such Unit Owner's or other person's successors in title.

(iv) The title held by each Unit Owner to the portion of each party wall within such Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall.

(k) Developer hereby reserves unto itself, with the power to assign, easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

(l) For as long as there are any unsold Units, the Developer shall have the right to use any such Units and parts of the Common Elements for model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units and residential Units within the overall Condominium and to erect on the Condominium Property signs and other promotional material to advertise Units (or the other aforesaid residential Units) for sale or lease.

(m) If not previously existing, any other easements described or shown on the Condominium Plat are hereby created.

(n) Until such time as the Developer completes and sells all of the Units in the Condominium, the Developer reserves the right to prohibit access to any portion of the Common Elements or uncompleted Units to any of the occupants of the Condominium, and to utilize various portions of the Common Elements or the Units in connection with such construction and development. No Unit Owner or such Owner's guests or invitees shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, own any Units and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their guests and invitees shall in no way interfere with such activities or prevent access to such Units by the Developer, its employees or its successors or assigns.

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 services contemplated or the use of the easements created under this Section. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary, to maintain, repair or replace those items and areas, as detailed in Section 7 herein or as otherwise contemplated herein, for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserved, pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

Wherever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, designees, grantees, assigns, agents, employees, licensees, invitees and guests, and all easements referred to herein shall be nonexclusive easements unless otherwise stated.

### 3.5 Special Easements and Rights to Grant Easements.

(a) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, non-exclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas or other utility, cable television, security systems, communications service or other easements pertaining to the construction, maintenance and operation of other equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.

(b) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, non-exclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining improvements upon, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property

pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

(c) Developer hereby reserves unto itself and its successors and its assigns non-exclusive easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

3.6 Incidental Damage. Any damage to any Unit caused by, or as a result of, the carrying out of the maintenance responsibilities of the Association or another Unit Owner, or the negligence thereof, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be. Any damage to any part of the Common Elements caused by or the result of any intentional act of a Unit Owner, the Unit Owner's family, agents, contractors, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

#### **Section 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, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such 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.

#### **Section 5: Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights**

5.1 Ownership Shares. The undivided share in the Common Elements and Common Surplus appurtenant to each Unit, as well as the undivided share of the Common Expenses to be paid with respect to each Unit, shall be computed on the following basis:

(a) The allocation of percentage shares in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit is set forth in Exhibit No. 4 as attached hereto and made a part hereof by this reference. The allocation of percentage shares has been established by the Developer in the following manner:

(i) The approximate area of each Unit has been measured in square feet based upon the interior surface of the walls bounding the Unit, but excluding balconies, terraces, patios and porches. Such area for each such Unit is hereafter referred to as its "Unit Area."

(ii) The total of the Unit Area of all Units has been computed and is hereinafter referred to as the "Total Unit Area."

(iii) The Total Unit Area has been divided into the Unit Area of each Unit to determine the allocation of percentage shares for each Unit as set forth on Exhibit No. 4 to this Declaration.

(b) The foregoing methods of calculation were undertaken in order to establish a fair and equitable method of allocating sales values and assessment percentages to Units within the Condominium and every purchaser of a Unit, whether from the Developer or otherwise, hereby agrees to be bound by such calculations and hereby irrevocably waives the right to assert that the formula used or the measurements made were unfair, inequitable, or otherwise in error.

5.2 Limited Common Expense Exception. Certain Limited Common Expenses by their nature are more appropriately allocated on a per Unit basis as opposed to a percentage basis. The Board of Directors shall determine which expenses are to be allocated on a per Unit basis and budget and assess such expenses accordingly.