

This instrument prepared by,
and after recording return to:
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LEE COUNTY, FLORIDA
RECORDING FEE 1,225.50
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**DECLARATION OF CONDOMINIUM
OF
BEAU RIVAGE, A CONDOMINIUM**

BEAU RIVAGE HOMES FOR AMERICA, LLC, a Florida limited liability company,
hereby declares:

1. Introduction and Submission.

- 1.1 The Land. The Developer owns the fee simple title to certain land located in Lee County, Florida, as more particularly described in **Exhibit "1"** annexed hereto (the "Land").
- 1.2 Submission Statement. The Developer hereby submits the Land and, except as otherwise expressly indicated in Exhibit "1" annexed hereto, all improvements erected or to be erected thereon and therein (but excluding all public or private utility installations, e.g., cable television and/or other receiving or transmitting lines, antennae or equipment therein or thereon) to the condominium form of ownership and use in the manner provided for in the Act, as hereafter defined. Without limiting any of the foregoing, except as otherwise expressly indicated in Exhibit "1" annexed hereto, neither the bulkhead, submerged land, or any other property located outside of the Land, shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Act or any rules or regulations promulgated pursuant thereto. Notwithstanding anything to the contrary in this Declaration, neither the Land nor any of the Units, shall be within a Multi-condominium.
- 1.3 Name. The name by which this condominium is to be identified is **BEAU RIVAGE, A CONDOMINIUM** (hereinafter called the "Condominium").

2. Definitions.

The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter renumbered.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time are assessed against a Unit Owner.
- 2.4 "Association" or "Condominium Association" means BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, the entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors and the members of the board of directors, from time to time, of the Association.
- 2.7 "Building" means the structure in which the Units are located.
- 2.8 "By-Laws" means the By-Laws of the Association, as amended from time to time.
- 2.9 "Cabanas" means those areas within the Condominium, as depicted on Exhibit "1" annexed hereto, which have been or which may be designated, assigned or leased for individual use pursuant to Section 3.3(d).
- 2.10 "Charge" means the funds required for the payment of expenses, other than Common Expenses, which from time to time are charged against a Unit Owner (but not necessarily against all Unit Owners).
- 2.11 "Committee" means a group of members of the Board or Unit Owners, or members of the Board and Unit Owners, appointed by the Board, or by a member of the Board, to make recommendations to the Board or to take action on behalf of the Board.
- 2.12 "Common Elements" means and includes:
 - (a) The portions of the Condominium Property which are not a part of or included within the Units;

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- (b) Non-exclusive easements through the Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and to the Common Elements;
- (c) An easement of support in every portion of a Unit which contributes to the support of the Building;
- (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;
- (e) The easement in favor of each Unit Owner for the exclusive use and enjoyment of the Tennis Court; and
- (f) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

2.13 "Common Expenses" means all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Condominium Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a Common Expense by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include: (i) all expenses incurred by the Association for the maintenance, repair or replacement of those portions of the Units for which it is responsible pursuant to Section 7.1 of this Declaration; (ii) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (iii) if applicable, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (iv) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications and surveillance and restricted access systems which are reasonably related to the general benefit of the Unit Owners; (v) costs attributed to the Association's maintenance and upkeep of the Tennis Court; (vi) Limited Common Expenses; and (vii) any unpaid Assessments extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof. Common Expenses shall not include any other separate obligations of individual Unit Owners.

2.14 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, but excluding funds collected for reserves, over the amount of Common Expenses.

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- 2.15 "Condominium Parcel" means a Unit together with the Limited Common Elements appurtenant to said Unit and the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.16 "Condominium Property" means the Land, Improvements and other property described in Section 1.2. hereof, subject to the limitations thereof and exclusions therefrom.
- 2.17 "County" means the County of Lee, State of Florida.
- 2.18 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as the same may be amended from time to time.
- 2.19 "Developer" means BEAU RIVAGE HOMES FOR AMERICA, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder may be specifically assigned. Developer may assign all or any portion of its rights hereunder, or all or any portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. In the event the holder of any mortgage executed by the Developer, or any subsidiary or affiliate of the holder, obtains title to all or any portion of the Condominium Property by foreclosure, or deed in lieu thereof, or other conveyance, such holder, or subsidiary or affiliate of the holder, shall become the Developer only if it so elects by written notice to the Board, except as otherwise provided by the Act or the rules promulgated thereunder, but regardless of such election the holder, or subsidiary or affiliate of the holder, shall have the right to assign any of the rights of the Developer as provided herein to any third party who acquires title to all or a portion of the Condominium Property from the holder, or subsidiary or affiliate of the holder. In any event, any subsequent Developer shall not be liable for any defaults or obligations incurred by any prior Developer, except as same are expressly assumed by the subsequent Developer. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the control of the Association.
- 2.20 "Dispute", for purposes of Section 19, means any disagreement between two or more parties that involves: (a) the authority of the Board under any law, rule or regulation or under this Declaration, the Articles or the By-Laws to: (i) require any Owner to take any action, or not to take any

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action, involving that Owner's Unit; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law, rule or regulation or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves: title to any Unit, Limited Common Elements or Common Elements; the interpretation or enforcement of any warranty; the levy of a fee or Assessment, or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Unit; alleged breaches of fiduciary duty by one or more directors of the Association; or claims for damages to a Unit based upon an alleged failure of the Association to maintain the Common Elements or Condominium Property.

- 2.21 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.22 "Improvements" shall mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on and in the Condominium Property, including, but not limited to, the Building.
- 2.23 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.24 "Life Safety Systems" means those emergency lighting, audio and visual signals, security systems and sprinkler and smoke detection systems which have been installed in the Building, both within and without the Units, pursuant to the requirements of the applicable governmental authority having jurisdiction over same. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, shall be Common Elements.
- 2.25 "Limited Common Elements" means those Common Elements, the exclusive use and enjoyment of which is reserved to the Owners and occupants of a certain Unit or Units to the exclusion of the Owners and occupants of other Units, as specified in this Declaration. References

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herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or unless otherwise expressly provided.

- 2.26 "Multi-condominium" means a real estate development containing two or more condominiums, all of which are operated by the same association.
- 2.27 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, first mortgages on Units securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.28 "Private Garages" means those areas within the Condominium, as depicted on Exhibit "1" annexed hereto and located on the Ground Level adjacent to the Parking Garage, which shall initially be Common Elements, but shall become Limited Common Elements upon the assignment thereof pursuant to Section 3.3(c) of this Declaration. For purposes of Section 3.3(c) of the Declaration, all references to parking spaces shall be deemed to include Private Garages.
- 2.29 "Tennis Court" means that certain tennis court located on the rooftop of the Parking Garage and depicted on Exhibit "1" annexed hereto.
- 2.30 "Turnover" means the date the Developer no longer has the right to elect or appoint a majority of the Board of Directors at which time the Unit Owners shall assume control of the Association.
- 2.31 "Unit" or "Units" means those portions of the Condominium Property which are subject to exclusive ownership.
- 2.32 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

3. Description of Condominium

- 3.1 Identification of Units. Each Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "1" attached hereto. Exhibit "1" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building, and a plot plan thereof. Said Exhibit "1", together with this Declaration, is sufficient in detail to identify the Common Elements, Limited Common Elements and each of the Units and their relative locations and dimensions. There shall pass with the Units as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus as set forth herein; (b) the exclusive right to use such portion of the Common Elements and Limited Common Elements as may be provided in this Declaration; (c) an exclusive

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easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) any other appurtenances as may be provided by this Declaration.

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 planar intersections with the perimetrical boundaries:

- (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the top story of the Unit if the Unit contains more than one story), provided that in multi-story Units, if any, where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling.
- (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story of the Unit if the Unit is a multi-story Unit), provided that in multi-story Units, if any, where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor.
- (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the floors of a multi-floor Unit, or nonstructural interior walls shall be considered a boundary of the Unit.
- (iv) Boundaries Further Defined. The boundaries of the Unit shall not include all of those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and

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floors, and those surfaces above the undecorated and/or inner surfaces of the ceilings of each Unit and, further, shall not include those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions and, further, shall exclude all pipes, ducts, wires, conduit, Community Systems and other facilities running through any interior wall or partition for utility services to other Units and/or for Common Elements. No part of the interior non-boundary walls within a Unit shall be considered a boundary of the Unit.

- (v) Notwithstanding anything to the contrary contained herein, no post tension wiring contained in the Building shall be considered a part of a Unit. All such wiring is essential to the structure and support of the Building and shall be deemed Common Elements of the Condominium and may not be disturbed or altered without the prior written consent of the Board.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided however that the exteriors of doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall be Common Elements.
- (d) Exceptions and Conflicts. In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit shown on Exhibit "1," the above provisions describing the boundary of a Unit shall control, it being the intention of this Declaration that the actual as-built boundaries of the Unit as above described shall control over any erroneous dimensions contained in Exhibit "1" attached hereto, and in the event it shall appear that any dimension shown on Exhibit "1" attached hereto is erroneous the Developer (so long as it holds any Unit for sale in the ordinary course of business) or the President of the Association (after the

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Developer no longer owns any Units) shall have the right to unilaterally amend the Declaration to correct such survey, and any such amendment shall not require the joinder of any Unit Owner or mortgagee so long as the purpose of the amendment is merely to correct an error and correctly describe the boundaries of a Unit. In the case of Unit boundaries not adequately described as provided above, the survey of the Units contained in Exhibit "1" shall control in determining the boundaries of a Unit. In the case of any conflict between this Declaration describing the boundaries of any Unit, and in the language contained on Exhibit "1" describing the boundaries of a Unit, the language of this Declaration shall control.

3.3 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

- (a) Patios, Balconies and Terraces. Any patio, balcony, terrace or roof-top (and all improvements thereto and walls facing same) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The Association shall be responsible for the maintenance of the structural and mechanical elements of all such Limited Common Elements, with the Owner of the Unit to which they are appurtenant responsible for the general maintenance and appearance of such areas, as well as the insurance of all contents thereon. The approval requirements set forth in Section 9.1 of this Declaration shall be applicable to any proposed improvements to such Limited Common Elements.
- (b) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively, and any area (e.g., a closet or ground slab) upon/within which such fixtures or equipment are located, which are outside the Unit(s), shall be Limited Common Elements of such Unit(s).
- (c) Vehicle Parking Spaces/Private Garages. The Common Elements include parking areas for vehicles, consisting of parking spaces and Private Garages. For purposes of this subsection, all references to parking spaces shall be deemed to include Private Garages. The Developer for so long as it holds any Unit for sale in the ordinary course of business, and thereafter the Association, may assign any parking space for the exclusive use of a Unit, which assignment shall be part of the official records of the Association but shall not be recorded, unless required under the Act to effectuate a valid assignment. For so long as it holds any Unit for sale in the ordinary

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course of business, the Developer shall be entitled to receive compensation in exchange for assignments of parking spaces and thereafter the Association shall be entitled to receive compensation therefor. Any parking space so assigned will be a Limited Common Element of the Unit to which it is assigned. No Unit Owner or resident of any Unit, and none of their guests or invitees, shall park in a parking space assigned to another Unit without the permission of the applicable Unit Owner. A Unit may be assigned one or more Limited Common Element parking spaces appurtenant to the Unit.. A Unit Owner may assign the Limited Common Element parking space appurtenant to his Unit to another Unit by written instrument delivered to (and held by) the Association; provided, however, that no Unit may be left without at least one (1) Limited Common Element parking space. While the maintenance of each space so assigned shall be the responsibility of the Association, the, the insurance of all contents therein shall be the sole responsibility of the Owner of the Unit to which it is assigned. The maintenance of the interior portions of each of the Private Garages, and all contents therein, as well as the insurance of such contents, shall be the sole responsibility of the Owner of the applicable Units to which such Private Garages are assigned. No Owner or occupant of a Unit shall park more than an aggregate total of three vehicles on the Condominium Property. Without limiting the generality of the foregoing, the Developer or the Association, as applicable, shall be entitled to relocate assigned parking spaces at any time, and from time to time, to comply with applicable Federal, State and local laws and regulations regarding or affecting handicap accessibility.

EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT A PORTION OF THE PARKING GARAGE FOR THE CONDOMINIUM (THE "PARKING GARAGE") IS LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY AUTOMOBILES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE ASSOCIATION IN INSURING THE PARKING GARAGE, AND FOR OWNERS, MAY BE HIGHER THAN IF THE GARAGE WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A PARKING SPACE OR A PRIVATE GARAGE, EACH OWNER, FOR HIMSELF AND HIS TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (d) Cabanas. The Common Elements include Cabanas. The Developer for so long as it holds any Unit for sale in the ordinary course of business, and thereafter the Association, may assign any Cabana

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for the exclusive use of a Unit, which assignment shall be part of the official records of the Association but shall not be recorded. For so long as the Developer owns any Unit, the Developer shall be entitled to receive compensation in exchange for assignments of Cabanas and thereafter the Association shall be entitled to receive compensation therefor. Any Cabana so assigned will be a Limited Common Element of the Unit it is assigned to. No Unit Owner or resident of any Unit, and none of their guests or invitees, shall use a Cabana assigned to another Unit without the permission of the applicable Unit Owner. A Unit Owner may assign the Limited Common Element Cabana appurtenant to his Unit to another Unit by written instrument delivered to (and held by) the Association. While the exterior and structural maintenance of each Cabana so assigned shall be the responsibility of the Association, interior spaces of each Cabana shall be the sole responsibility of the Owner of the Unit to which it is assigned, the insurance of all contents therein shall be the sole responsibility of the Owner of the Unit to which it is assigned.

EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT THE CABANAS OUTSIDE OF THE BUILDING ARE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE ASSOCIATION IN INSURING THE CABANAS, AND FOR OWNERS, MAY BE HIGHER THAN IF THE CABANAS WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACCEPTING THE ASSIGNMENT OF A CABANA, EACH OWNER, FOR HIMSELF AND HIS TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (e) Mortgage Provision. Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages his or her Unit, together with a description of certain Limited Common Elements appurtenant thereto, such Limited Common Elements shall not be assignable apart from the Units unless they are released from the lien of such mortgage.
- (f) Roof-Tops. The Common Elements include that portion of the roof-top of the Building lying and existing directly above the Units on the uppermost floor of the Condominium, as depicted in **Exhibit "2"** hereof, (as extended upward). Any roof-top area (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit. The Association shall be responsible for the maintenance of the

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structural and mechanical elements of all such roof-top areas. The cost and expense of such maintenance shall be charged to all Unit Owners as Common Expenses payable to the Association, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners. The use of the roof top areas assigned to a Unit shall be regulated by the Rules and Regulations adopted by the Association. The approval requirements set forth in Section 9.1 of this Declaration shall be applicable to any proposed improvements to such roof-top areas.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act):

- (a) Support. Each Unit, the Building and the Improvements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and any other structure or Improvement which abuts any Unit, Building or Improvements.
- (b) Utility and Other Services; Drainage. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other service or drainage facilities or the use of these easements. The Association or its agents shall have an irrevocable right of access to each Unit and to the Limited Common Elements to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and to Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit and Limited Common Elements.
- (c) St. Tropez Condominium Easements. A five foot (5') exclusive easement is reserved for ingress and egress, and for utilities and drainage, under, through and over a portion of the western boundary of the Condominium, as shown in Exhibit "1" hereto, for the use, benefit, enjoyment of "Parcel Two", as shown thereon, which is a proposed development known as "St. Tropez-Ft. Myers", for the use and benefit of the owners, occupants, tenants, guests

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and invitees thereof, and any master and/or condominium associations governing all or any portion thereof, including (without limitation), the right to pave, enclose, maintain, repair any replace any such facilities now or hereafter located thereon.

- (d) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; (c) any Common Elements encroach upon any other portion of the Condominium Property; or (d) 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 the Developer, as appropriate; (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; or (v) any non-purposeful or non-negligent act of the Developer or a Unit Owner, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as any such Improvements, shall stand.
- (e) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and occupant, their guests and invitees, shall exist (i) 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 (ii) 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 subparagraph 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.
- (f) Construction and Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing construction thereof, or any part thereof, or any Improvements or Units located or to be

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located thereon, and for repair, replacement and maintenance or warranty purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required to do so.

- (g) Sales, Marketing and Development Activities. As long as Developer owns any portion of the property subject to this Declaration, Developer, its designees, successors and assigns, shall have (i) the right to use any Units owned or leased by Developer, and any other part of the Common Elements or Association Property, for guest accommodations, models and sales and construction offices, to show model Units and the Common Elements in the Condominium or model units, Common Elements, or any other property owned by Developer or any affiliate of Developer to prospective purchasers and lessees of Units or any other property owned by Developer or an affiliate of Developer, and to use Units as guest suites, all in connection with sales, marketing and development in the Condominium, any other Condominium within the property subject to this Declaration, or any other property owned by Developer or an affiliate of Developer and to erect on the Condominium Property and Association Property signs and other promotional materials to advertise Units or other property owned by Developer or any affiliate of Developer for sale or lease; (ii) such easements over, upon, across and under the Condominium Property as may be reasonably required in connection with the development, construction, decoration, marketing, sale or leasing of any Unit within the Condominium Property, or within any other property owned by the Developer or any affiliate of Developer.
- (h) Association Easements. The Association and its agents, employees, contractors and assigns shall have easements to enter onto the Condominium Property and Association Property for the purpose of performing such functions as are permitted or required to be performed by any such associations, including, but not limited to, maintenance, controlled-access activities, if any, fire hose access and enforcement of architectural control and other restrictions. The easements reserved in favor of the Association and its agents, employees, contractors and assigns, shall include access easements through all Units and Limited Common Elements to perform exterior maintenance to the Building, including such window washing and painting as the Association may be required to perform, and easements to stage window washing and other maintenance equipment on the Limited Common Elements.
- (i) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Building,

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then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines, pipes, and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property, or the Building).

- (j) Boat Dock Maintenance, Utility and Access Easement. A 10-foot wide non-exclusive easement, along the northern boundary of the Condominium Property adjacent to the bulkhead, and a 10-foot wide non-exclusive easement, along the eastern boundary of the Condominium Property, all as depicted on Exhibit "1" annexed hereto, are reserved for the use and benefit of the owners, from time to time, of the bulkhead and the adjacent submerged land, and their tenants, guests, and invitees, for maintenance, utilities, and ingress and egress to and from the bulkhead, the adjacent submerged land, and the boat slips and related facilities, if any, now or hereafter constructed thereon.
- (k) Tennis Court. The Unit Owners shall be collectively provided with the exclusive right to use and enjoy the Tennis Court.
- (l) Additional Easements. The Developer, for so long as it holds any Unit for sale in the ordinary course of business, and the Association, through the Board, acting on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and/or the Association, as applicable, as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, security systems, service or drainage easements, hurricane shutters (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or to relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Units, or any portions thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

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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 appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to the Units shall remain undivided, and no action may be brought for partition of the Common Elements, the Condominium Property, or any part thereof, except as provided herein with respect to termination of the Condominium.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.
 - 5.1 Percentage Ownership and Shares. The undivided percentage in the Common Elements and Common Surplus, and the share of the Common Expenses, appurtenant to each Unit, is as set forth on **Exhibit "2"** attached hereto.
 - 5.2 Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and the Articles of Incorporation. Each Unit Owner shall be a member of the Association.
6. Amendments. Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:
 - 6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Except as may be elsewhere provided, approvals must be by an affirmative vote representing in excess of 66 2/3% of the voting interests of Unit Owners. Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary of the Association at or prior to the meeting.
 - 6.2 By the Board. Except as elsewhere provided herein or by the Act, the Board of Directors, upon the unanimous vote of all the directors, shall have the right, without the consent of the Unit Owners, to make the following amendments to this Declaration: (i) amendments made to conform to the requirements of any Institutional First Mortgagee so that such mortgagee will make, insure, or guarantee first mortgage loans on

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the Units, (ii) amendments required by any governmental authority, or (iii) amendments made to conform with the provisions of this Declaration to any provisions of the Act or any rule promulgated thereunder, or any other applicable statute or regulation now or hereafter adopted or amended, provided however that no such amendment shall be effective to impose any additional liability or obligation on the Developer.

- 6.3 Material Amendments. No amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereof, join in the execution of the amendment, and unless all the record owners of all other Units approve the Amendment.
- 6.4 Material Alterations or Substantial Additions. The Association shall not make any material alterations or substantial additions to the Common Elements or to real property which is Association Property, without the approval of a majority of the voting interests of the Unit Owners. The installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or substantial addition to the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
- 6.5 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of 66-2/3 of such mortgagees in each instance. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.6 By the Developer. Notwithstanding anything herein contained to the contrary, as long as the Developer owns any portion of the Condominium Property, this Declaration, the Articles of Incorporation or the By-Laws may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, including (without limitation), those changes to Developer-owned Units permitted in Section 10 of this Declaration, but expressly excluding an amendment: (i) to permit time-share estates (which must be approved, if at all, by all Unit Owners

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and mortgagees on Units); or (ii) to effect a "Material Amendment" (as defined in Section 6.3 above) or (iii) to effect changes or amendments prohibited to be made by the Developer or by the Association pursuant to the Act. No amendment to this Declaration, the Articles or the By-Laws may be adopted by the Association, the Board or any other party which would eliminate, modify, alter, prejudice, abridge or otherwise adversely affect, in any manner, any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance which may be withheld in its sole and unfettered discretion.

- 6.7 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors, which shall include recording information identifying this Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of this Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words inserted in the text shall be underlined; and deleted words shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision _____ for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

- 7.1 Units. All maintenance, repairs and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

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- 7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, (i.e., as to Limited Common Elements) or (ii) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided below) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.
- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair the following specific items shall be the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units or are Limited Common Elements:
- (a) where a Limited Common Element consists of a balcony, terrace, Cabana, storage space or roof-top, the Unit Owner who has the right to the exclusive use of said balcony, terrace, Cabana, storage space or roof-top shall be responsible for the maintenance, care and preservation of the finished surfaces of floors and interior spaces within said areas, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions of said areas, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any, as well as for the general maintenance and appearance of such areas, and the insurance of all contents thereon.
 - (b) Where a Limited Common Element consists of a storage space, the Association shall be responsible for the maintenance, care and preservation, and as necessary, replacement of the outer surfaces and structural portions of said storage space.
 - (c) Where a Limited Common Element consists of a roof, the Association shall be responsible for the maintenance, care and preservation, and as necessary, replacement of the structural portions of said roof.
 - (d) Where a Limited Common Element consists of a Cabana, the Association shall be responsible for the maintenance, care and preservation, and as necessary, replacement of the outer surfaces and structural portions of said Cabana.
 - (e) Any additions, alterations or improvements to Units or Limited Common Elements shall be subject to the consents and approvals required in Section 9.

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- 7.4 Reporting to the Association. No Unit Owner shall operate, maintain, repair or replace any portion of the Condominium Property to be operated, maintained, repaired and/ or replaced by the Association, or the Association Property, without first obtaining written approval from the Association. Each Unit Owner shall promptly report to the Association or any applicable management company any defects or need for repairs, maintenance, or replacements, the responsibility for which is that of the Association.
- 7.5 Authorization to Enter. Whenever it is necessary to enter any Unit for the purpose of performing any maintenance, repair or replacement of any Common Elements or any other Unit, or for making emergency repairs necessary to prevent damage to any Common Elements or to any other Unit, the owner of the Unit shall permit the Association or persons authorized by it to enter the Unit for such purposes, provided that such entry may be made only at reasonable times and with reasonable advance notice, except that in the case of an emergency no advance notice will be required. Any damage resulting from any such entry shall be a Common Expense, except where such entry is required in order to repair a Unit, in which event the Unit Owner will be responsible for such damage. To facilitate entry in the event of any emergency, the owner of each Unit shall deposit a key to the service entry door of such Unit with the Association.
- 7.6 Damage Responsibility. Each Unit Owner and resident shall be liable for any damage to the Common Elements, or any Limited Common Elements, or any other Unit, caused by the Unit Owner or by any resident of his Unit, or by any guest or invitee thereof, or caused by fire, leaking water, or other cause emanating from the Unit Owner's Unit, to the extent the cost of repairing any such damage is not paid by insurance obtained by the Association. Any maintenance, repair or replacement which was necessitated by the failure of a Unit Owner or by any of its family, tenants, guests or invitees, to abide by their obligations hereunder, or was caused by the willful or negligent act of a Unit Owner, its family, tenants, guests or invitees, shall be effected by the Association at said Unit Owner's sole expense and a Special Charge therefor shall be made against its Unit; and (b) if the Association determines the Unit Owner has failed to abide by its obligations hereunder, and, to the extent necessary to prevent damage to the Common Elements or to any Unit, the Association may, but shall not be obligated to, perform any maintenance, repair or replacement to any portions of a Unit or the Improvements thereon for which the Unit Owner is responsible, at said Unit Owner's sole expense, and a Special Charge therefor shall be made against such Unit.
- 7.7 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) where proceeds of insurance are made available therefor, all maintenance, repairs and

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replacements in or to the Common Elements (other than those Limited Common Elements to be maintained by the Unit Owners as provided above) and Association Property shall be performed by the Association and the cost and expense thereof shall be assessed to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be a special charge against such units pursuant to Section 13.2(a) hereof. No Unit Owner shall operate, maintain, repair or replace any portion of the Condominium Property to be operated, maintained, repaired and/or replaced by the Association, or the Association Property, without first obtaining written approval from the Association. Each Unit Owner shall promptly report to the Association, or to any applicable management company, any defects or need for repair, maintenance, or replacements, the responsibility for which is that of the Association.

7.8 Exception for Casualty Damage. Notwithstanding anything in this Section 7 to the contrary, in the event any portion of a Unit, Limited Common Element or Common Element required to be maintained by the Association is damaged or destroyed by fire, hurricane or other casualty covered by property insurance which the applicable Unit Owner maintains and which actually covers such damage or destruction, the Association may require the Unit Owner to be responsible for payment of the costs incurred by the Association in repairing and restoring any such damage.

8. Additions, Improvements or Alterations by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$100,000 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Unit Owners represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

9. Additions, Alterations or Improvements.

9.1 By Unit Owners/Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to his Unit or to any Limited Common Element, the Common Elements or the Association

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Property, which alters the exterior appearance thereof, which could in any way affect the structural, electrical, plumbing or mechanical systems of the Building, or which otherwise requires the approval of the Association pursuant to Section 17 of this Declaration, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of any such addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked, unless the work is not completed within one (1) year from the date of such approval. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Board of Directors, or any officer, agent or Committee thereof, the Developer and all other Unit Owners, harmless from and to indemnify them for, any liability or damage to the Condominium Property and expenses arising therefrom.

Without limiting the generality of the foregoing, any Unit Owner proposing to install a similar improvement within his Unit or the Limited Common Elements shall, if required by the Board of Directors, submit to it a summary of the liability insurance coverage to be obtained for such improvement. From and after the time the installation of the improvement is commenced, and if required by the Board of Directors, the Unit Owner and his heirs, successors and assigns shall at all times maintain such insurance coverage under the same terms and in the same amounts as those originally approved by the Board of Directors. Without limiting the generality of Section 11.2 hereof, neither the Association, the Board of Directors, any Committee, member, director, officer, agent or employee thereof, the Developer or manager nor any of their respective directors, officers, Committees, employees, contractors, agents or affiliates, shall be liable for any injury or damage caused by any defects, unsafe conditions or other matters arising from the use (be it authorized or unauthorized) of the afore-described improvements, notwithstanding any approvals given by any of the aforesaid parties as to the installation of such improvements. In the event that the foregoing sentence is ultimately held to be unenforceable or otherwise not effective, the Unit Owner, his lessees and/or successors in title shall indemnify and hold harmless the Association, its Board of Directors, and the Developer, and all of their respective directors, committee members, officers, employees,

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contractors, agents and affiliates, for and from all manners of action, claims, judgments, and other liabilities in any way whatsoever connected with any such improvements contemplated herein. The foregoing insurance and indemnity provisions shall also apply to each Owner and occupant of the applicable Unit other than the Developer even if any such improvement is installed by the Developer.

The Board of Directors shall, from time to time, establish specifications for hurricane shutters and other hurricane protection which comply with the applicable building codes, and shall establish permitted color(s), style(s), dimension(s), material(s) and installation requirements for hurricane shutters and other hurricane protection. Subject to the provisions hereof, the Association shall approve the installation or replacement of hurricane shutters and other hurricane protection conforming with the Board's specifications.

The Association may condition any such proposed improvement upon, among other things: (i) a reasonable damage deposit being posted with the Association, by the party authorizing work to be done, for protection against damage which may result to the Common Elements or other Units; and/or (ii) a certificate of liability and worker's compensation insurance being provided to the Association, naming the Association as an insured thereunder, as to each party to perform such work.

- 9.2 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon the roof top or any Unit owned by it and any Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), or both of them; and (b) expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.2 shall be adopted in accordance with Section 16.7 and Section 10 of this Declaration. To the extent that an amendment hereunder changes the configuration or size of any Unit in any material fashion, materially alters or modifies the appurtenances to the Unit or changes the proportion or percentage by which the Owner of the Unit shares the Common Expenses or owns the Common Surplus, such an amendment shall require the consent of the record owner of the Unit, all record owners of liens on the affected Unit, and all the record owners of all other Units, as well as a majority of total voting interests in the Association, unless it is required by any governmental entity.

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- 9.3 Life Safety Systems. Neither any Unit Owner nor the Association shall make any additions, alterations or improvements to the Life Safety Systems without the prior consent of the appropriate governmental authority. No lock, padlock, bar, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner or by the Association without the Association obtaining the consent of the applicable governmental authority having jurisdiction over same. All means of egress must permit unobstructed travel at all times. No barrier including, but not limited to personal property, shall impede the free movement ingress and egress.
10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 8.2 above, and anything to the contrary in the Declaration notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or no-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units, by combining separate Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that the Owners of such Units consent thereto and that any such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.6, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of the same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.3 above. Without limiting the generality of Section 6.6 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer. To the extent that an amendment hereunder changes the configuration or size of any Unit in any

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material fashion, materially alters or modifies the appurtenances to the Unit or changes the proportion or percentage by which the Owner of the parcel shares the Common Expenses or owns the Common Surplus, such an amendment shall require the consent of the record owner of the Unit, all record owners of liens on the affected Unit, and all record owners of all other Units, as well as a majority of total voting interests, unless required by any governmental entity.

11. Operation of the Condominium by the Association.

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws (respectively **Exhibits "3" and "4"** annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements, Limited Common Elements or any portions of a Unit to be maintained by the Association, or at any time and by force, if necessary, to prevent damage or to make emergency repairs to the Common Elements, the Association Property or to a Unit or Units.
- (b) The power to make and collect Assessments, Charges and other levies against Unit Owners and to require, administer, lease, maintain, repair and replace the Common Elements and Association Property.
- (c) The duty to maintain accounting records pursuant to accepted accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may or may not be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and Charges, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in

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this Declaration, the Articles, By-laws, rules and regulations and the Act, including, but not limited to, the making of Assessments, promulgation of rules and regulations and execution of contracts on behalf of the Association.

- (e) Subject to the provisions of Section 7.8, the power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and a majority of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (g) The power to charge a fee for the exclusive use of any Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner being granted, by the Association, a right to such exclusive use.
- (h) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors, subject to Section 7.8 hereof. Real property shall be acquired upon a majority vote of the Board of Directors; provided that the requirements of Section 7.8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments or Charges (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit without requiring the consent of Unit Owners.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as may be expressly limited or restricted therein.

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

- 11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair required hereunder, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9.1 hereof. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Association nor any of its officers, directors, committees, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to his Unit, agrees not to seek damages from the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing (nor shall its review of any plans be deemed approval of) any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses and liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, theft, personal injury, death or other liability, including (without limitation) any liability for any damaged or stolen vehicles or other personal property left therein or elsewhere within the Common Elements, or on the grounds that the Association did not obtain or maintain insurance

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(or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required as to any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration, the Articles, the By-Laws or under applicable law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles or By-Laws, applicable rules and regulations or applicable law, all approvals or actions permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
- 11.6 Effect on Developer. Notwithstanding anything herein to the contrary, if the Developer holds one or more Units for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of Developer.
- (a) Assessment of the Developer as a Unit Owner for capital improvements or any other action that would be detrimental to the sales of Units by the Developer, provided however, that an increase in assessments for Common Expenses, without discrimination against the Developer, shall not be deemed to be detrimental to its sales of Units;
 - (b) Any action by the Association that would, in the Developer's sole and exclusive opinion, be detrimental to the construction, decorating, design, marketing, promotion or sale of Units by the

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Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Units.

12. Determination of Common Expenses and Fixing of Assessments Therefor.

The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of the budget, adopted from time to time, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if and to the extent required by, and not waived in accordance with, applicable law or established by the Association), the operation, maintenance, repair and replacement of the Condominium Property and/or Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall designate, subject to change, to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

13. Collection of Assessments.

13.1 Liability for Assessments and Charges. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and Charges against the grantor for his share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

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

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

- 13.3 Default in Payment of Assessments for Common Expenses and Charges. Assessments and Charges, and installments thereof, not paid within ten (10) days from the first day of the period in which they become due shall bear interest at the rate of eighteen percent (18%) per annum, or the highest rate permitted by law, whichever is less. The Association may also charge an administrative late fee, in addition to such interest, in an amount not to exceed the highest amount provided for in the Act (as it may be amended from time to time). The Association has a lien on each Condominium Parcel to secure the payment of Assessments and Charges thereon, together with interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments or Charges or enforcement of the lien. Except as otherwise provided in the Act, and as set forth below, the lien for Assessments is effective from, and shall relate back to the recording of this Declaration. However, as to first mortgages of record, the lien for Assessments is effective from and after recording of a claim of lien in the Public Records of Lee County, Florida. Notwithstanding anything herein to the contrary, Charges shall not be Common Expenses, shall not be collectible as Assessments, and shall not be secured by the Association's lien rights arising pursuant to the Act. The Association's lien for Charges is created solely pursuant to this Declaration and is effective only from and after the recording of a claim of

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lien by the Association. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Unit, the name of the record Unit Owner, the name and address of the Association, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amounts as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The one year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, Charges, interest thereon, if permitted under applicable law, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments or Charges in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments and Charges without waiving any claim of lien.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the balance of the Assessment installments for the current budget year to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the period for which Assessments were accelerated, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The

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notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

- 13.5 First Mortgagees. Any first mortgagee or its successors or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure or otherwise, is liable for all Assessments which come due while it is the Unit Owner and is jointly and severally liable with the previous Unit Owner for all unpaid Assessments which came due up to the time of the transfer of title. This liability is without prejudice to any rights the first mortgagee or any such other party may have to recover any such sums it may have paid to the Association from the previous Unit Owner. Notwithstanding the foregoing, in no event shall any such first mortgagee or its successors or assigns be liable for more than the Unit's unpaid Assessments which accrued or come due during the six (6) months immediately preceding its acquisition of title to the Unit, and for which payment in full has not been received by the Association, or by one percent (1%) of the original mortgage debt, whichever amount is less. The provisions of this paragraph shall not apply unless the first mortgagee or its successors or assigns joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after the transfer of title. Failure to pay the amount owed to the Association when due shall entitle the Association to record a claim of lien against the Unit and proceed in the same manner as provided in this Section for unpaid assessments. The foregoing limitation of liability shall apply to any purchase at a foreclosure sale of a first mortgage regardless of whether the purchaser is the holder of the foreclosed mortgage. A first mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Assessments coming due during the period of such ownership.

- 13.6 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments, Charges and other monies owed to the Association by the Unit Owner with respect to his Unit have

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been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

- 13.7 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Assessments will be collected monthly.
- 13.8 Application of Payments. Any payments received by the Association from a delinquent Unit Owner for Assessments shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment. Any payments received by the Association from a delinquent Unit Owner for Charges shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Charge. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
14. Insurance. Insurance covering the Condominium Property shall be governed by the following provisions:
- 14.1 Purchase Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
 - (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to any modifications which may be reasonably required by the Primary Institutional First Mortgagee.
 - (c) Named Insured. The named insured shall be the Association, individually, and as agent for the Unit Owners covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
 - (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).

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- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, or for their personal liability and living expenses and for any other risks not otherwise insured in accordance herewith.

14.2 Coverage. The Association shall use commercially reasonable efforts to maintain insurance covering the following:

- (a) Casualty. The Condominium Property and all Association Property shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policy shall cover, among other things, all Common Elements and all of the Units within the Condominium including, but not limited to, partition walls, doors, windows, and stairways. Such policy shall not include hurricane shutters, unit floor coverings, wall coverings, ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets or personal property. Such policy may also exclude any other property permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as amended from time to time, and may contain reasonable deductible provisions as determined by the Board of Directors. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Condominium in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance, if applicable, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such

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coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

- (c) Workers' Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if required by the Primary Institutional First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- (e) Fidelity Insurance if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, including but not limited to those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The insurance policy or fidelity bond must be in an amount not less than the greater of (i) the maximum funds that will be in the custody of the association or its management agent at any one time, (ii) three (3) times the total monthly Assessments or (iii) such amounts as may be required, from time to time, under the Act.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

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

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Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, shall have the following endorsements: (i) agreed amount and inflation guard; and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without endeavoring to provide at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such a manner as the Board of Directors deems appropriate.
- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may, but need not, be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it fails, or determines not to appoint an Insurance Trustee as provided in Section 14.9 below. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any, is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or to participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the

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remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first, to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages; second, to the Association for any due and unpaid Assessments or Charges; and third, the balance, if any, to the beneficial owners.

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

- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claim.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, or casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for all insurance as to all such risks and as to any other risks not covered by insurance carried by the Association, including insurance for personal belongings located on Limited Common Elements.
- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint an Insurance Trustee, the Association will perform directly all obligations imposed upon the Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s), Limited Common Elements or Common Elements, such property shall be presumed to be Common Elements.

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15. Reconstruction or Repair After Fire or Other Casualty.

- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof, and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be first applied to demolish any remaining improvements, and shall thereafter be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages, liens and Assessments and Charges on his Unit in the order of priority of such mortgages, liens, Assessments and Charges.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) or the Association notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) or the Association notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work, provided however, that the Board

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may, in its sole discretion, grant written extensions for such periods as the Board determines. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

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

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

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

(i) Association - Lesser Damage. If the amount of the estimated cost of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of

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an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

- (ii) Association - Major Damage. If the amount of the estimated cost of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Unit Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the

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manner elsewhere stated; except, however, that part of the distribution to an Owner which is not in excess of Assessments and Charges paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments and Charges shall be deposited by the Association with the Insurance Trustee, or to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, or whether a disbursement is to be made from the construction fund, or to determine whether surplus funds to be distributed are less than the Assessments and Charges paid by Owners, or to determine the payees or the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

15.4 Assessments and Charges. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments or Charges shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and Charges on account of damage to the Optional Property, shall be in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. Condemnation.

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the

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power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of a failure to do so, in the discretion of the Board of Directors, a Special Charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against any sums hereafter made payable to that Owner.

- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, a taking by eminent domain also shall be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 15 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium.
- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award with respect to the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Unit Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the

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share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

- (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
- (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or reduces the size of a Unit so that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Charges and Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions with respect to a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements. Any awards attributable to more than one Unit shall be divided among the affected Unit Owners in proportion to the damage or impairment suffered by each such Unit Owner, as determined by the Association in its sole discretion.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work

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shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
- (i) add the total of all percentages of all Units of continuing Unit Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Unit Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

- (d) Assessments. If the balance of the award (after payments to the Unit Owners and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The

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cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of taking.

- 16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Unit Owner and the mortgagees of the Unit.
- 16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and shares in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of the Board of Directors.
17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:
- 17.1 Occupancy. Except as otherwise herein expressly provided, the Units shall be used for residential purposes only. No business, profession or trade of any type shall be conducted on any portion of the Units. Further, this prohibition shall not be applicable to the Developer with respect to its development of the Condominium Property, its construction, repair, decorating, administration, sale, rental or lease of Units, or its use of Units as models, V.I.P. or guest suites, or for sales offices or management services. Nothing herein shall be construed to prohibit ownership of a Unit by a corporation, domestic or foreign, provided that the residential nature of the Units is not disturbed.

Occupancy in Units, except for temporary occupancy by visiting guests, shall not exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and

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the like). The provisions of this Section 17.1 shall not be applicable to Units used by the Developer for model units, V.I.P. suites, sales offices or management or other services.

Unless otherwise determined by the Board of Directors, and except as otherwise provided in Section 17.2, a person(s) occupying a Unit for more than one (1) month without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Section (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Declaration and the Board of Directors shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

- 17.2 Leases. Leasing of Units shall be subject to the prior written approval of the Association. Every lease of a Unit may require, in the sole discretion of the Association, a deposit from the prospective tenant in an amount not to exceed one (1) month's rent ("Deposit"), to be held in an escrow account maintained by the Association, provided, however, that the Deposit shall not be required for any Unit which is rented or leased directly by or to the Developer. No lease shall be for a term of less than one (1) month and a Unit Owner may not lease its Unit more than twelve times in any calendar year period, regardless of the lease term. The foregoing requirement shall not apply to a Unit rented or leased directly by or to the Developer. Every lease shall provide (or, if it does not, shall be automatically deemed to provide) that: (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease); (ii) and that a tenant may not, under any circumstances, sublet the Unit (or any portion thereof) to any other person or permit occupancy by any other person. Additionally, copies of all written leases shall be submitted to the Association and tenants must register with the Association prior to moving in. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements from the acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and a special charge may be levied against the Unit therefore.

All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease.

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- 17.3 Children. Children shall be permitted to reside in the Units, subject to the provisions of Section 17.1, above, and applicable rules and regulations which may be adopted by the Association from time to time.
- 17.4 Pets. Except as hereafter provided, no animals, wildlife, livestock, reptiles, or poultry of any kind, shall be raised, bred, or kept on any portion of the Condominium Property. There may not be more than two (2) household pets, of up to 25 pounds each, maintained within any Unit and the Limited Common Elements appurtenant thereto, to be limited to dogs or cats (or other household pets as defined and specifically permitted by the Association), which shall not be kept, bred or maintained for any commercial purpose and shall not become a nuisance or annoyance to neighbors. Notwithstanding the foregoing, a Unit Owner may, subject to all other applicable restrictions, rules and regulations, keep in the Unit, and the Limited Common Elements appurtenant thereto, an otherwise permitted pet which exceeds 25 pounds if an exemption was granted by the Developer for such pet(s). Those pets which, in the sole discretion of the Association endanger health, have the propensity for dangerous or vicious behavior (such as pit bulldogs or other breeds or mixed breeds which have the propensity for dangerous or vicious behavior), make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or to the owner of any other portion of the Condominium Property shall be removed upon request of the Board. Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times, or must be carried, when outside the Unit. No pet may be kept on a balcony or terrace when its owner is not in the Unit. Without limiting the generality of Section 19 hereof, any violation of the provisions of this Section 17.4 shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section 17.4 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that it does not become a nuisance or annoyance to neighbors.
- 17.5 Use of Common Elements and Association Property. The Common Elements and other Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units. The Common Elements shall not be obstructed, littered, defaced, or misused in any manner. In no event shall any Unit Owner or occupant place, or permit the placement of, any item which obstructs, or otherwise impedes access to, any portion of the Condominium Property which are either designated or used as delivery and receiving areas.

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- 17.6 Nuisances. No portion of the Units, Limited Common Elements or Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No obnoxious or offensive activity shall be carried on in any Units, Limited Common Elements, Common Elements or other portions of the Condominium Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board of Directors shall have the right to determine if any equipment, fixture, improvement, materials or activity producing such noise or odor constitutes a nuisance. In particular, during the hours from 11:00 p.m. through 8:00 a.m. no Unit Owner shall play (or permit to be played in its Unit, or in the Limited Common Elements or Common Elements) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. Additionally, there shall not be maintained therein any plants, animals, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Condominium Property. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted within the Condominium Property. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 17.7 Outside Items. No rubbish, garbage, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Condominium Property, except within designated trash receptacles. No linens, clothing, household fabrics, curtains, rugs, or laundry of any kind shall be hung, shaken, dried or aired from any windows, doors, balconies, terraces or other portions of the Condominium Property. No articles shall be placed on balconies, patios or similar areas. The foregoing shall not prevent placing and using patio-type furniture, planters and other items in such areas if the same are normally and customarily used for a residential balcony, patio or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board of Directors shall be final and dispositive.
- 17.8 Firearms. The discharge of firearms and fireworks within the Condominium is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

- 17.9 No Improper Uses. No improper, offensive, hazardous 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 thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or the By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.9. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.
- 17.10 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to the provisions of Section 11 hereof, no Unit Owner shall cause or allow improvements or changes to his Unit, or to any Limited Common Elements, Common Elements, or Association Property, which alters the exterior appearance thereof, or which could in any way affect the structural, electrical, plumbing or mechanical systems of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof). No spas, hot tubs, whirlpools or similar improvements shall be permitted on any patio or balcony.
- 17.11 Sound, Weight and Flooring Restrictions. The installation of hard and/or heavy surface floor coverings such as tile, marble, wood, and the like, other than in bathrooms of Units, must be approved by the Board of Directors and must achieve a minimum overall Impact Isolation Class rating of 48 in combination with the structural floor slab. Additionally, the installation of any improvement or heavy object must be approved by the Board of Directors and must be compatible with the overall structural design of the Building. In no event shall any heavy object, which would exceed a life load limit of 50 pounds per square foot, be placed in any Unit. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Additionally, the Board may require Unit Owners to furnish it with certifications of the floor assembly Impact Isolation Class rating from the installers of such surfaces. The color and exact materials to be used on balcony floor coverings shall also be approved by the Board. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Owner agrees that

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sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. **The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.**

- 17.12 Exterior Improvements. Without limiting the generality of Section 9.1 or 17.10 hereof, but subject to the provisions of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Units or the Limited Common Elements appurtenant thereto (including, but not limited to, awnings, canopies, shutters, window coverings, signs, screens, window tinting, fixtures and equipment), without the prior written consent of the Association. No painting or changes in the exterior colors of any Units or the Limited Common Elements appurtenant thereto shall be permitted.
- 17.13 Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE", "FOR RENT", security service or construction signs shall be displayed to the public view on any portion of the Units, Limited Common Elements or Common Elements, without the prior written consent of the Association, except (a) signs, regardless of size, used by the Developer, its successors or assigns or a party developing or marketing any portion of the properties subject to this Declaration, including signs used for construction or repairs, advertising, marketing, promotion, sales or leasing activities, (b) signs installed as part of the initial construction of the Units or other Improvements and replacements of such signs (similar or otherwise) and (c) bulletin boards, entrance, directional, informational and similar signs used by the Association.
- 17.14 Lighting. All exterior lights and exterior electrical outlets must be approved in accordance with Section 9 of this Declaration.
- 17.15 Exterior Sculpture and Similar Items. Exterior sculpture, flags, and similar items must be approved in accordance with Section 9 of this Declaration. Notwithstanding the foregoing, any Unit Owner may respectfully display one (1) portable, removable American flag, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, any Unit Owner may respectfully display portable, removable official flags, not larger than four and one-half feet by six feet (4'6" x 6') that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

- 17.16 Air Conditioning Units. No window or wall mounted air conditioning units may be installed in any Unit.
- 17.17 Outside Installations. No radio station or short-wave operations of any kind shall operate from any Unit, Limited Common Elements or Common Elements. Except to the extent permitted under applicable laws, no exterior satellite dish, or other transmitting or receiving apparatus, radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Common Elements, Limited Common Elements, or Units, without the prior written consent of the Association. Notwithstanding the foregoing, upon obtaining the prior written consent of the Association, satellite dishes, and other devices permitted under Section 207 of the Telecommunications Act of 1996, may be installed within the Units or within any Limited Common Elements appurtenant thereto, provided, however, that in no event shall any such device be installed in or on any other portion of the Condominium Property. To the extent permissible under applicable law, the Association may enact Rules and Regulations, requiring that any such devices which may be permitted under applicable law are comparable in size, weight and appearance, are installed and maintained in a manner designed to protect the safety of the Building and its occupants and satisfy any standards established by the Association for architectural appearance purposes.
- 17.18 Window and Door Treatments. No reflective film, tinting or window coverings shall be installed on any windows or glass doors, except as necessary to replace or restore tinting of glass surfaces as originally installed, unless approved by the Association in accordance with Section 9.1 of this Declaration. Curtains, drapes and other window coverings (including their linings) which face on exterior windows or glass doors of Units, or are visible from the exterior of the Building, shall be white or off-white in color, unless otherwise specifically approved by the Board of Directors. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit, except for any substance previously approved by the Board of Directors for energy conservation or hurricane protection purposes. No unsightly materials may be placed on any window or glass door or shall be visible through such window or glass door. Any screen door must be of a uniform type approved by the Association.
- 17.19 Hurricane Protection. No type of hurricane protection may be installed in or around the Units and the Limited Common Elements appurtenant thereto, other than hurricane shutters or other hurricane protection approved by the Association, which shall be installed or affixed in a manner approved by the Association. Upon issuance of an official hurricane warning, each Unit Owner shall take all actions necessary to prepare his/her Unit for any such hurricane, which shall include (i)

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removing all objects from balconies and terraces which will not be secured or otherwise protected, and (ii) complying with all rules and regulations which may have been adopted by the Association from time to time. No hurricane or storm shutters or other hurricane protection shall be permanently installed on any structure in a Unit or in the Limited Common Elements or Common Elements, unless first approved in accordance with Section 9 hereof.

- 17.20 Unit Maintenance. Each Unit Owner must undertake or must designate a responsible firm or individual to undertake his general maintenance responsibilities, which responsibilities shall include, at a minimum, maintaining the exterior appearance of the Unit and the Limited Common Elements, safeguarding the Unit and the Limited Common Elements to prepare for hurricane or tropical storm watches and warnings by, among other things, removing any unfixed items on balconies and terraces, and repairing the Unit and the Limited Common Elements in the event of any damage therefrom. An Owner may designate a firm or individual to perform such functions for the Owner, but such designation shall not relieve the Owner of any responsibility hereunder. The name(s) and addresses of such firm or individual must be furnished to the Association. The designation of such firm or individual shall be subject to the approval of the Association.
- 17.21 Hazardous Substances. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit, Limited Common Elements or Common Elements, except such as are generally used for normal household purposes. No electric, gas, charcoal barbecue or other cooking devices, or outside cooking, is permitted on any patio or balcony.
- 17.22 Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left in the hallways or other Common Elements or in the Limited Common Elements (including balconies, terraces and patios).
- 17.23 Parking and Prohibited Vehicles. No person shall park any vehicle so as to obstruct or otherwise impede ingress or egress to any parking spaces, including, without limitation, to a parking space assigned to any other Unit. Parking in the Condominium shall be restricted to private automobiles and passenger-type vans, jeeps and pick-up trucks and sport utility vehicles not exceeding one-half ton, motorcycles, motor scooters, small trailer and jet ski trailers (all of which are collectively referred to herein as "vehicles"). No person shall park, store or keep on any portion of the Condominium Property any large type commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), nor may any person keep any other vehicle on the Condominium Property which is deemed to be a nuisance by the Board. No trailer, camper, boat,

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motor home or recreational vehicle shall be used as a residence, either temporarily or permanently, or parked on the Condominium Property. The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted on the Condominium Property which leaks oil, brake fluid, transmission fluid or other fluids. No Unit Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portion of the Condominium Property. No more than one (1) motorcycle or motor scooter may be parked in a single parking space, and in no event may a motorcycle or a motor scooter be parked in the same parking space as another vehicle or between any parking spaces. Motorcycles, motor scooters, boats, jet ski and/or boat trailers may be stored within the Private Garages by any Unit Owner to whom such a Private Garage has been assigned. For so long as the Developer conducts any sales or leasing activities on the Condominium Property, its use of parking spaces shall not be impeded or restricted.

The prohibitions on parking contained in this section shall not apply to temporary parking of: (a) commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services; (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, repair, decorating, sales or marketing purposes; or (c) service vehicles operated in connection with the Association, or its management companies.

Subject to applicable laws and ordinances, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing.

17.24 Insurance Rates. Nothing shall be done or kept in the Common Elements or within the Units or the Limited Common Elements which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Units, or on the Limited Common Elements or Common Elements, which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

17.25 Association Access to Units. In order to facilitate access to the Units by the Association for the purposes enumerated in Section 11.1 hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their Unit to the Association to use in the performance of its functions. No

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Owner shall change the locks to its Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.

- 17.26 Documents. Each Owner shall be obligated to deliver the documents received from the Developer, or from any prior Owner, containing this Declaration and any other declarations and documents, and any modifications thereto, to any purchaser or grantee of their Unit.

Notwithstanding the foregoing, in the event of loss or damage to the documents they may be obtained from the Association upon payment of the actual cost for preparing and furnishing the documents to any Owner requesting them.

- 17.27 Guest Suite. The Guest Suite located within the Common Elements may be reserved and used by Unit Owners subject to such rules and regulations as the Association shall enact, from time to time, including, without limitation, rules governing the manner and frequency within which a Unit Owner may reserve the use thereof. The Association shall also establish, from time to time, daily reservation fees and deposits to reimburse the Association for the cost of utilities and wear and tear to the Guest Suite.

- 17.28 Tennis Court. The rooftop of the Parking Garage shall contain the Tennis Court. At no time whatsoever shall more than twenty (20) individuals be permitted, for any reason, to congregate on the rooftop of the Parking Garage.

- 17.29 Mold Prevention. No Unit Owner shall install within his or her Unit, or upon the Common Elements and/or the Condominium Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture and/or shelving within a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Further, all Unit Owners, whether or not occupying the Unit, shall continuously run the air conditioning system to minimize humidity in the Unit. While the foregoing is intended to minimize the potential development of molds, mildew, spores, fungi and/or other microtoxins, the Developer does not make any representations or warranties regarding the existence or development of molds or microtoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of molds, mildew, spores, fungi and/or other microtoxins.

- 17.30 Rules and Regulations. As provided in the By-Laws, the Board of Directors may adopt rules and regulations applicable to all portions of the

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Condominium Property other than the property owned by the Declarant. In the event that such rules or regulations are adopted, they may be enforced in the same manner as the restrictions set forth in this Section and may be modified, added to or revoked, in whole or in part, by the Board of Directors, and as provided in the By-Laws.

- 17.31 Effect on Developer. The restrictions and limitations set forth in this Section 17 shall not apply to the Developer or to Units owned by the Developer, except that the Developer shall be subject to the requirement that prior written approval of the Condominium Association be obtained for leases of Units set forth in Section 17.2, and to the pet restrictions set forth in Section 17.4. The Developer shall also be subject to any restrictions in Section 17.23 on the type of vehicles allowed to park on the Condominium or on any Association Property; however the Developer and its designees shall be exempt from any such restrictions if the vehicle is engaged in any activity relating to construction, decorating, maintenance, sale, rental or marketing of Units.
18. Selling and Mortgaging of Units. No Unit Owner other than the Developer may sell their Unit, except by complying with the following provisions:
- 18.1 Right of First Refusal. Any Unit Owner who receives a bona fide offer to purchase a Unit (such offer to purchase a Unit is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept shall give notice by certified and/or registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require and shall be accompanied by a check in the amount of \$100.00 (or such greater amount as may be required by the Association and permitted by the Act) representing a screening fee. The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell his Unit to the Association or to its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation to the Association by the Unit Owner who has received such Outside Offer that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than twenty (20) days after receipt of such notice, together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said twenty (20) day period, by certified and/or registered mail, to purchase such Unit upon

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the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

In the event the Association shall timely elect to purchase such Unit or to cause the same to be purchased by its designee, title shall close at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within twenty (20) days after the giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offer, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title binder (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest, if any, and Assessments shall be apportioned between the Offeree Unit Owner and the Association, or its designee, as of the closing date.

In the event the Association or its designee shall fail to accept such offer in the manner required under this Section, within twenty (20) days after receipt of notice and all additional information requested, as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer within thirty (30) days after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such thirty (30) day period, accept, in writing, the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such thirty (30) day period, but such sale shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this Section.

Any deed to an Outside Offeror shall automatically be deemed to provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, and all other agreements, documents or instruments affecting the Condominium Property.

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Any purported sale of a Unit in violation of this Section shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing), or to void the conveyance (in case of an unauthorized sale). Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

The foregoing restrictions regarding sales of Units shall not apply to Units sold by or to the Developer or by or to any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure or in satisfaction of debt. The Developer and such Institutional First Mortgagees shall have the right to sell Units they own, without having to first offer the same for sale (as to Institutional First Mortgagees only) to the Association.

Notwithstanding anything herein contained to the contrary, the Board of Directors, in exercising its rights as provided in this Section 18.1, shall not make any decision in a discriminatory manner, and no decision shall be made on the basis of race, gender, religion, national origin or physical or mental handicap.

- 18.2 Consent of Unit Owners to the Purchase of Units by the Association. The Association shall not exercise any option hereinabove set forth to purchase any Unit without the prior approval of Owners of a majority of the Units present in person or by proxy and voting at a meeting at which a quorum has been obtained.
- 18.3 No Severance of Ownership. No part of the Limited Common Elements or Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Limited Common Elements and Common Elements whether or not explicitly stated.
- 18.4 Release by the Association of the Right of First Refusal. The right of first refusal contained in Section 18.1 may be released or waived by the Association only in the manner provided in Section 18.5. In the event the Association shall release or waive its right of first refusal as to any Unit, such Unit may be sold and conveyed free and clear of the provisions of Section 18.1.
- 18.5 Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by an officer of the Association stating that the

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provisions of Section 18.1 have been satisfied by a Unit Owner, or stating that the right of first refusal contained therein has been duly released or waived by the Association, and that, as a result thereof, the rights of the Association thereunder have terminated, shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall promptly furnish such certificate upon request to any Unit Owner with respect to whom the provisions of such Section have, in fact, terminated or been waived. No fee shall be charged by the Association in connection with the furnishing of such certificate in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the Act.

- 18.6 Financing of Purchase of Units by the Association. The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.
- 18.7 Exceptions. The provisions of Section 18.1 shall not apply with respect to any sale or conveyance of any Unit by: (a) the Unit Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trust, corporation or other entity where the Unit Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trust, corporation or other entity, or to any one or more of the above; (b) the Developer; (c) the Association; (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or the delivery of a deed in lieu of foreclosure; or (e) to an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure or in satisfaction of debt; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18. The Association shall be given prior written notice of any such conveyance or transfer, including the name and address of the intended grantee.
- 18.8 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18. The Association shall be given prompt written notice of any

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such conveyance or transfer, including the name and address of the intended grantee.

18.9 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.

19. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant, guest and other invitee of a Unit Owner, shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time, and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

19.1 Mandatory Nonbinding Arbitration and Mediation of Disputes. Prior to the institution of court litigation, a party to a Dispute shall petition the Division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program. The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

- (1) Advance written notice of the specific nature of the Dispute;
- (2) A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
- (3) Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the Dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

Upon receipt, the petition shall be promptly reviewed by the Division to determine the existence of a dispute and compliance with the requirements of paragraph (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the Division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

Upon determination from the Division that a Dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b)

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and any other applicable rules, a copy of the petition shall forthwith be served by the Division upon all respondents.

Either before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the Division. Upon receipt of a request for mediation, the Division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the Dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a Dispute to mediation at any time.

Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the Division under section 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from a list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noted mediation conference, without permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleading filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney's fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that the Association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board ratify and approve such a settlement within five (5) days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless otherwise agreed.

The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

Mediation proceedings must generally be conducted in accordance with Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties

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agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be either binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at a mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney's fees that may be recovered by the prevailing party in any subsequent litigation.

The arbitration shall be conducted according to rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations. At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the Division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the Division or for failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

The arbitration decision shall be presented to the parties in writing. An arbitration decision is final in those Disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for trial de novo is not filed in a court of competent jurisdiction in the County within thirty (30) days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of dispute. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorneys' fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs and other reasonable costs, including, attorney's fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

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Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in the County. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney's fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

- 19.2 Negligence and Compliance. A Unit Owner and/or lessee of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association with respect to such negligence. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, and to impose a Charge on the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

20. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements

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and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor, as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, or, if authorized by a vote of a majority of the Unit Owners, in proportion to the appraised value of each Unit as determined by an appraisal to be obtained by the Board. No payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.

This Section may only be amended with the prior written consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

21. Additional Rights of Mortgagees and Others.

21.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

21.2 Amendments. No amendment may change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, change the proportion or percentages by which the Unit Owner shares the common expenses and owns the common surplus, or permit timeshare estates to be created in any Unit, unless a Majority of Institutional First Mortgagees approve the amendment, which approval shall not be unreasonably withheld. The approval of a Majority of Institutional First Mortgagees, which shall not be unreasonably withheld, shall also be required if such an approval is required under the rules, regulations or requirements of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

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

- (a) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit;
- (b) a sixty (60) day delinquency in the payment of the Assessments or any Charges on a mortgaged Unit;

- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

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

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

23. Access of Developer to Building and Units and to Reports. For as long as Developer remains liable to the Condominium Association, under any warranty, whether statutory, express or implied, for any act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its agents shall have the right, in Developer's sole discretion, and from time to time upon the granting of access thereto by the Condominium Association or a Unit Owner, as the case may be, to enter the Condominium Property for the purpose of inspecting, testing and surveying same, to determine the need for repairs, improvements or replacements, so as to permit Developer to fulfill its obligations under such warranties. Failure of the Condominium Association or of a Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. For as long as the Developer remains liable to the Association under any warranty, whether statutory, express or implied, or for any act or omission of the Developer relative to the development, construction, sale and marketing of the Condominium, the Association shall furnish

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to the Developer all documentation prepared on behalf of the Association concerning the inspection, testing and surveying of the Common Elements or Units relative to analyzing such areas for compliance with all such warranties. Failure of the Association or of a Unit Owner to provide such access to reports and/or documentation shall result in the appropriate warranty being nullified and being of no further force or effect.

24. Notices. All notices to the Association required or desired hereunder or under the Articles or By-Laws, shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Owner's Unit, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or to such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

25. Additional Provisions.

- 25.1 Interpretation. The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretations shall be binding upon all parties unless wholly unreasonable and an opinion of legal counsel engaged by the Association for such purpose that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 25.2 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 25.3 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over the provisions hereof.
- 25.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-

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president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

- 25.5 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Articles, the By-Laws or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 25.6 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Articles and By-Laws, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 25.7 Waiver; Modifications. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 25.8 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 25.9 Litigation/Waiver of Jury Trial. As to any claim arising from or connected with the Developer's construction, development, repair, replacement or maintenance of the Condominium Property, or the Developer's operation of the Association (the "Development Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Development Matters that (i) the party or parties bringing same shall have first given notice to the Developer or other party against whom/which relief

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or recovery is sought (the "Defendant") of the specific Development Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have been given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Development Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Development Matter(s) and shall have materially failed to do so. **THE DEVELOPER, THE ASSOCIATION, AND ALL OWNERS AND OTHER PERSONS ACQUIRING ANY RIGHT, TITLE OR INTEREST IN OR TO ANY UNIT, EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM PERTAINING TO ANY DEVELOPMENT MATTERS.** Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 25.9, as shall the Developer and the Association.

- 25.10 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 25.11 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 25.12 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

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- (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortious activities; and
- (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

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

26. **DISCLAIMER OF WARRANTIES.**

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT FOR THE WARRANTIES REQUIRED IN SECTION 718.203 OF THE ACT, TO THE EXTENT APPLICABLE. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND AS TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND CLAIMS FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES.

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IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed this 15 day of October, 2004.

Witnessed by:

Maria De Guevara

Print: Maria De Guevara

Jody Hernandez

Print: Jody Hernandez

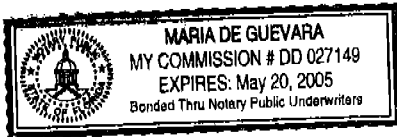
BEAU RIVAGE-HOMES FOR AMERICA, LLC, a
Florida limited liability company

By: Robert M. Kohn
Robert M. Kohn, as President and Manager

Address:
2797 First Street, Ft. Myers FL 33916

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing Declaration was acknowledged before me, this 15 day of October, 2004, by Robert M. Kohn, as President and Manager of BEAU RIVAGE HOMES FOR AMERICA, LLC, a Florida limited liability company, on behalf of the company. Such person is personally known to me.



Maria De Guevara

Name: Maria De Guevara

Notary Public, State of Florida

My Commission Expires:

DECLARATION

JOINDER

BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 15 day of October, 2004.

Witnessed by:

Maria De Guevara

Print: Maria De Guevara

Jody Hernandez

Print: Jody Hernandez

BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit

By: Robert M. Kohn
Robert M. Kohn, Vice-President and Director

Address:
2797 First Street, Ft. Myers FL 33916

STATE OF FLORIDA)
)SS:
COUNTY OF MIAMI-DADE)

The foregoing joinder was acknowledged before me this 15 day of October, 2004, by Robert M. Kohn, as Vice-President and Director of BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of said corporation. Such person is personally known to me or produced a driver's license as identification.



Maria De Guevara

Name: Maria De Guevara

Notary Public, State of Florida

My Commission Expires:

DECLARATION

CONSENT OF MORTGAGEE

THIS CONSENT is given as of the 16 day of September, 2004, by Wachovia Bank, National Association ("Mortgagee"), being the owner and holder of that certain Mortgage from Beau Rivage Homes for America, LLC, f/k/a Amalfi-Homes for America, LLC, a Florida limited liability company ("Mortgagor"), dated December 30, 2002 and recorded January 2, 2003 in Official Records Book 3810, Page 2668, of the Public Records of Lee County, Florida, securing the original principal amount of \$29,500,000.00

WHEREAS, Mortgagor has requested Mortgagee to consent to the recording of the Declaration of Condominium of Beau Rivage, a Condominium (the "Declaration").

NOW, THEREFORE, Mortgagee consents to the recordation of the Declaration.

Mortgagee makes no warranty or any representation of any kind or nature concerning the Declaration, any of its terms or provisions, or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of Beau Rivage, a Condominium (the "Condominium"), and does not assume and shall not be responsible for any of the obligations or liabilities of the developer contained in the Declaration or the prospectus, (if any) or other documents issued in connection with the promotion of the Condominium. None of the representations contained in the prospectus, (if any) or other documents shall be deemed to have been made by Mortgagee, nor shall they be construed to create any obligation on Mortgagee to any person relying thereon. This consent is limited to the purposes and requirements of Section 718.104, Florida Statutes, and does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage or in the Declaration.

DECLARATION

-

Witnessed by:

Nancy Elblfe
Print Name: Nancy Elblfe

Nellie McCandless
Print Name: Nellie McCandless

Wachovia Bank, National Association

By: James S. Howard

Print Name: James S. Howard

Title: Senior Vice-President

Address: 5801 Pelican Bay Blvd., Naples FL
34108

STATE OF FLORIDA)
) SS:
COUNTY OF COLLIER)

The foregoing consent was acknowledged before me this 16th day of September, 2004, by James S. Howard, as Senior Vice-President of Wachovia Bank, National Association. He/She is personally known to me or produced a driver's license as identification.

Nellie V. McCandless
Name: Nellie V. McCandless

Notary Public, State of Florida
My Commission Expires:



Nellie V. McCandless
My Commission DD097666
Expires May 07, 2008

DECLARATION

CONSENT OF MORTGAGEE

THIS CONSENT is given as of the 11th day of October, 2004, by USA Commercial Mortgage Company, a Nevada corporation, as Agent for Lender ("Mortgagee"), being the owner and holder of that certain Mortgage from Beau Rivage Homes for America, LLC, f/k/a Amalfi-Homes for America, LLC, a Florida limited liability company ("Mortgagor"), dated January 2, 2003 and recorded February 11, 2003 in Official Records Book 3844, Page 2497, as amended by that certain First Amendment to Mortgage, dated March 15, 2004 and recorded April 5, 2004 in Official Records Book 4247, Page 716, all of the Public Records of Lee County, Florida, securing the original principal amount of \$8,000,000.00

WHEREAS, Mortgagor has requested Mortgagee to consent to the recording of the Declaration of Condominium of Beau Rivage, a Condominium (the "Declaration").

NOW, THEREFORE, Mortgagee consents to the recordation of the Declaration.

Mortgagee makes no warranty or any representation of any kind or nature concerning the Declaration, any of its terms or provisions, or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of Beau Rivage, a Condominium (the "Condominium"), and does not assume and shall not be responsible for any of the obligations or liabilities of the developer contained in the Declaration or the prospectus, (if any) or other documents issued in connection with the promotion of the Condominium. None of the representations contained in the prospectus, (if any) or other documents shall be deemed to have been made by Mortgagee, nor shall they be construed to create any obligation on Mortgagee to any person relying thereon. This consent is limited to the purposes and requirements of Section 718.104, Florida Statutes, and does not affect or impair the rights and remedies of Mortgagee as set forth in the Mortgage or in the Declaration.

Witnessed by:

Thomas Rondeau

Print Name: Thomas Rondeau

Amanda Skus

Print Name: Amanda Skus

USA Commercial Mortgage Company, a
Nevada corporation

By: Joseph D. Milanowski

Joseph D. Milanowski, as President

Address: 4484 S. Pecos Rd.

Las Vegas, NV 89121

STATE OF NEVADA)

COUNTY OF Clark) SS:

The foregoing consent was acknowledged before me this 11 day of October, 2004, by Joseph D. Milanowski, as President of USA Commercial Mortgage Company, a Nevada corporation. He is personally known to me or produced a driver's license as identification.



Lynda Stewart

Name: LYNDA Stewart

Notary Public, State of ~~Florida~~ Nevada

My Commission Expires: 2/4/07

DECLARATION

- 2 -

BEAU RIVAGE, A CONDOMINIUM

SURVEYOR'S CERTIFICATE:

STATE OF FLORIDA
COUNTY OF LEE

ON THIS DAY APPEARED BEFORE ME, THE UNDERSIGNED AUTHORITY,
DULY AUTHORIZED TO TAKE OATHS, WAYNE D. AGNOLI, A LICENSED
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER, NO. 5335, STATE OF
FLORIDA, OF AGNOLI, BARBER & BRUNDAGE, INC. (THE AFFIANT), WHO,
BEING FIRST DULY SWORN, DEPOSES, SAYS AND AS FOLLOWS, TO WIT:

1. THAT HE IS A DULY REGISTERED AND DULY LICENSED PROFESSIONAL
SURVEYOR AND MAPPER AUTHORIZED TO PRACTICE UNDER THE LAWS
OF THE STATE OF FLORIDA.

2. AFFIANT HEREBY CERTIFIES THAT CONSTRUCTION OF THE IMPROVEMENTS
SHOWN WITHIN THIS EXHIBIT "1", IS SUBSTANTIALLY COMPLETE, SO THAT
THIS EXHIBIT "1", TOGETHER WITH THE PROVISIONS OF THE DECLARATION
OF CONDOMINIUM DESCRIBING THE CONDOMINIUM PROPERTY, IS AN
ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE
IMPROVEMENTS AND THAT THE IDENTIFICATION, LOCATION, AND DIMENSIONS
OF THE COMMON ELEMENTS AND OF EACH UNIT CAN BE DETERMINED FROM
THESE MATERIALS.

3. AFFIANT FURTHER CERTIFIES THAT ALL PLANNED IMPROVEMENTS, INCLUDING,
BUT NOT LIMITED TO LANDSCAPING, UTILITY SERVICES AND ACCESS TO THE
UNITS IDENTIFIED HEREIN AND COMMON ELEMENT FACILITIES SERVING
THE HEREIN IDENTIFIED UNITS HAVE BEEN SUBSTANTIALLY COMPLETED
IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 718.104.

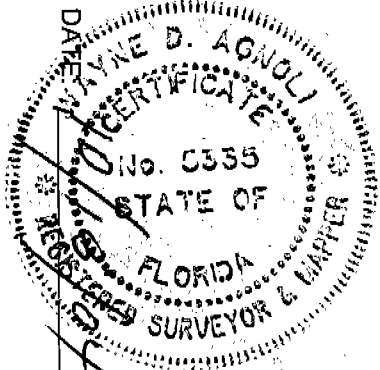
AGNOLI, BARBER & BRUNDAGE, INC.

BY:

WAYNE D. AGNOLI, P.S.M. #5335, STATE OF FL

SWORN TO AND SUBSCRIBED, BEFORE ME THIS 18 DAY OF October, BY WAYNE D. AGNOLI OF AGNOLI, BARBER & BRUNDAGE, INC., HE OR SHE PERSONALLY KNOWN TO ME AND DID TAKE AN OATH.

WITNESS MY HAND AND OFFICIAL SEAL THIS 18 DAY OF October, A.D. 2004



Wayne D. Agnoli
(ACKNOWLEDGER'S SIGNATURE)
AS A NOTARY PUBLIC IN THE STATE OF FL

MY COMMISSION EXPIRES: Aug. 26, 2007
PRINTED NAME OF ACKNOWLEDGER:
Wayne D. Agnoli
NOTARY PUBLIC STATE OF: FLORIDA
SERIAL NUMBER (IF ANY): D0450034

PREPARED BY:

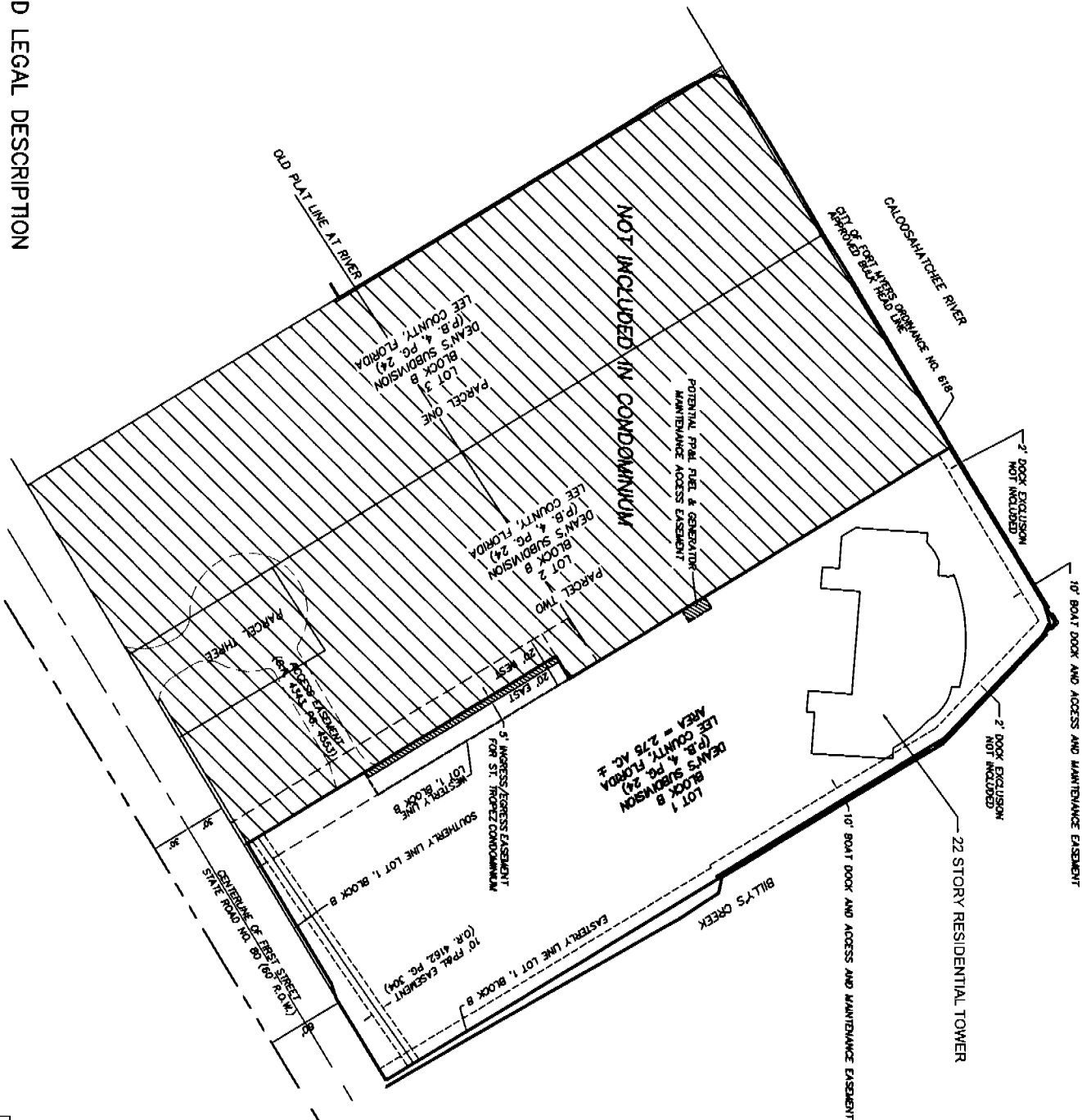
AGNOLI
BARBER &
BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North: Naples, FL 34108
Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and BB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD1A

LOCATION MAP
LOT 1
BLOCK "B"
DEAN'S SUBDIVISION
(P.B. 4, PG. 24)
LEE COUNTY, FLORIDA

BEAU RIVAGE, A CONDOMINIUM



CONDOMINIUM PLAT BOOK PAGE

EXHIBIT "1"
SHEET 2 OF 17

SCALE: 1" = 120'

DESCRIPTION OF LANDS SURVEYED

ALL THAT PART OF LOT 1, BLOCK "B", DEAN'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, PAGE 24, AND THE EAST 20 FEET OF VACATED PALM COURT, AS RECORDED IN THE COUNTY COMMISSION MINUTE BOOK 22, PAGES 39, 40A AND 40B, ALL OF THE PUBLIC RECORD OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK B, DEAN'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, PAGE 24, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE SOUTH 59°04'00" WEST ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80 60' WIDE RIGHT-OF-WAY) A DISTANCE OF 20.00 FEET TO THE CENTERLINE OF THE VACATED PORTION OF SAID PALM COURT; THENCE LEAVING SAID CENTERLINE OF SAID FIRST STREET NORTH 30°56'00" WEST ALONG SAID CENTERLINE OF SAID VACATED PALM COURT A DISTANCE OF 2.67 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN BEING DESCRIBED; THENCE CONTINUE NORTH 30°56'00" WEST ALONG SAID CENTERLINE OF SAID VACATED PALM COURT A DISTANCE OF 275.82 FEET TO THE NORTHERLY END OF SAID VACATED PALM COURT; THENCE NORTH 59°04'00" EAST 20.00 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF SAID LOT 1, BLOCK "B"; THENCE NORTH 30°56'00" WEST ALONG SAID WESTERLY LINE OF SAID LOT 1, BLOCK "B" A DISTANCE OF 339.51 FEET; THENCE LEAVING SAID WESTERLY LINE OF SAID LOT 1, BLOCK "B" NORTH 59°04'00" EAST 155.69 FEET; THENCE SOUTH 45°55'47" EAST 122.95 FEET; THENCE SOUTH 30°56'00" EAST 203.04 FEET; THENCE NORTH 59°04'00" EAST 2.00 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF SAID LOT 1, BLOCK "B"; THENCE SOUTH 30°56'00" EAST ALONG SAID WESTERLY LINE OF SAID LOT 1, BLOCK "B" A DISTANCE OF 296.20 FEET TO THE SOUTHEASTLY CORNER OF SAID LOT 1, BLOCK "B"; THENCE SOUTH 59°04'00" WEST ALONG THE SOUTH LINE OF SAID LOT 1, BLOCK "B" A DISTANCE OF 73.58 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF SAID LOT 1, BLOCK "B" SOUTH 72°33'54" WEST 11.71 FEET; THENCE SOUTH 59°04'00" WEST 124.52 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

CONTAINING 2.75 ACRES OF LAND MORE OR LESS, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

AGNOLI, BARBER & BRUNDAGE, INC.
WAYNE D. AGNOLI, R.S.M. NO. 5335

PREPARED BY:

AGNOLI
BARBER &
BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34106
Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3684 and EB 3684

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD2A

LOCATION SKETCH AND LEGAL DESCRIPTION

BEAU RIVAGE, A CONDOMINIUM

EXHIBIT "1"
SHEET 3 OF 17

CONDOMINIUM PLAT BOOK PAGE

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS. INDICATES LOCATION OF

2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).

3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.

4. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.

5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.671

6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 59°04'00" W.

7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.

9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.

10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS, LYING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.

11. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.

12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.

13. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.

14. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.

15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".

16. LANDSCAPING, CONDUITS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE TV, (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
17. P.O.B. = POINT OF BEGINNING.

18. P.O.C. = POINT OF COMMENCEMENT.

19. R.O.W. = RIGHT-OF-WAY.

20. U.E. = UTILITY EASEMENT.

21. CURVE DIMENSIONS ARE AS FOLLOWS:
Δ = DELTA, R = RADIUS, A = ARC, CH = CHORD,
AND CHB = CHORD BEARING

PREPARED BY:



Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34108
Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3604 and EB 3604

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD3A

SURVEYORS NOTES

BEAU RIVAGE, A CONDOMINIUM

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

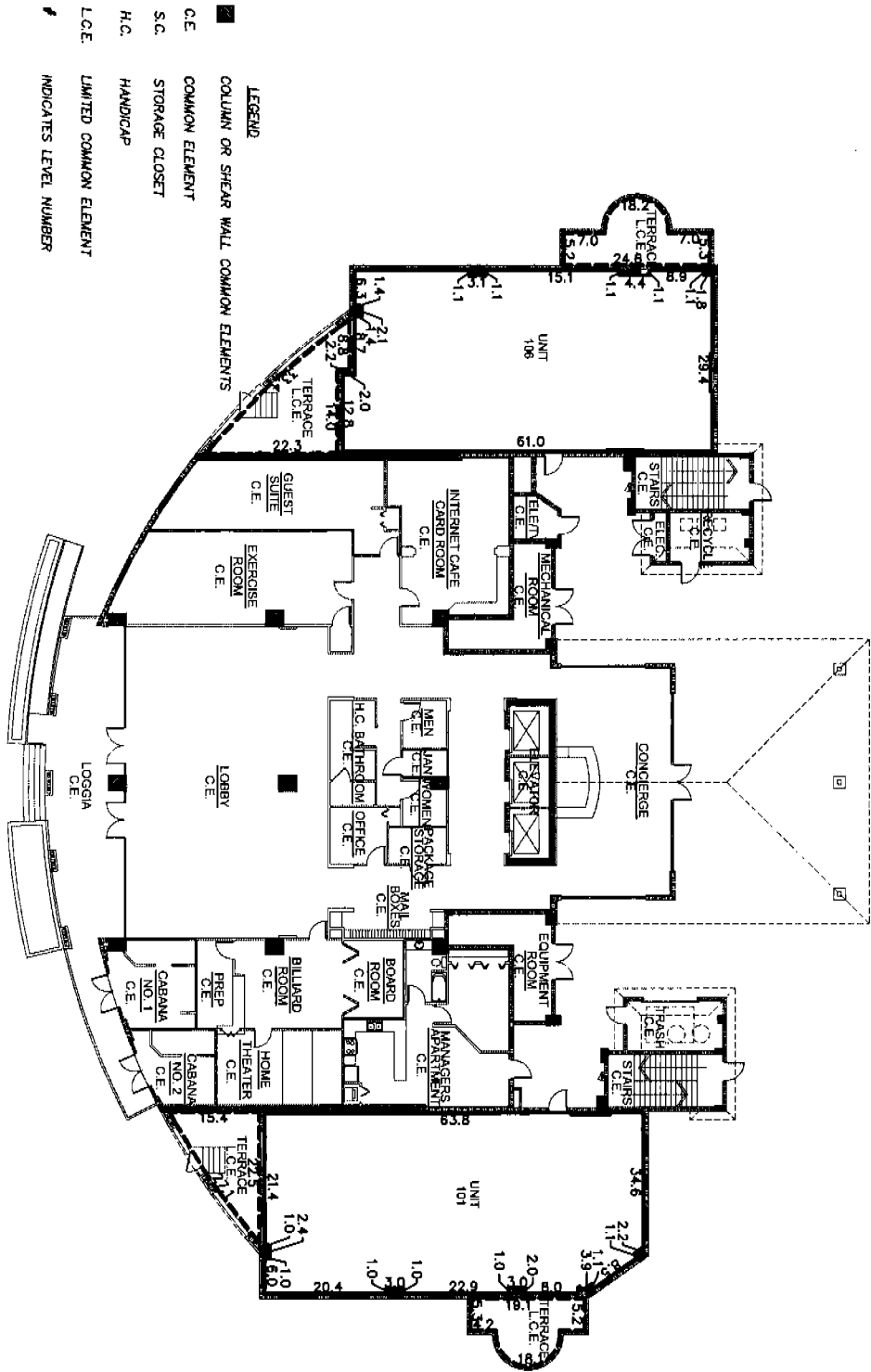
1. THE BOUNDARIES OF THE UNITS. INDICATES LOCATION OF
2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1928 USING BENCH MARK V-241, ELEVATION = 7.671
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 99°04'00" W.
7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE SURFACE OF THE UNFINISHED FLOOR OF THE UNIT AND THE CEILING Lying WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
11. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
13. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
14. THE BOUNDARY OF EACH TERRACE FLOOR AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
16. LANDSCAPING CONDUITS (PHONE, ELECTRIC, ETC.) DUCTS, PLUMBING, CABLE TV, (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
17. * = UNABLE TO MEASURE
18. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

PREPARED BY:

AGNOIL
BARBER & BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34108
Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and EB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-0D5A



SCALE: 1" = 30'

1ST FLOOR

BEAU RIVAGE, A CONDOMINIUM

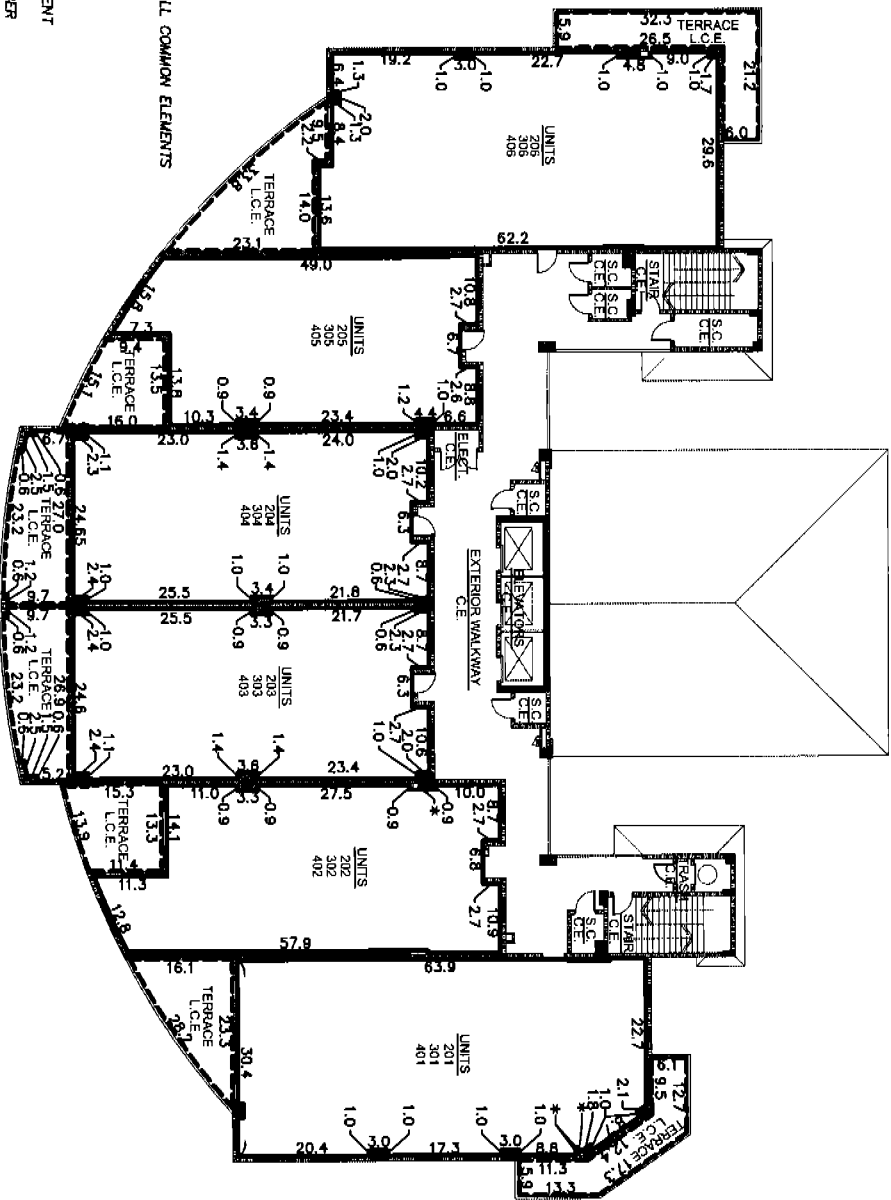
EXHIBIT "1"
SHEET 6 OF 17

CONDOMINIUM PLAT BOOK PAGE

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS.
2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.871
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 58°04'00" W. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
7. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
8. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
9. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS LYING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
10. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
11. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
12. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
13. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
14. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
15. LANDSCAPING CONDUITS (PHONE, ELECTRIC, ETC.) DUCTS, PLUMBING, CABLE, TV, OR PROVIDED OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
16. * = UNABLE TO MEASURE
17. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.
- 18.

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - S.C. STORAGE CLOSET
 - L.C.E. LIMITED COMMON ELEMENT
 - # INDICATES LEVEL NUMBER



SCALE: 1" = 30'

TYPICAL FLOORS 2ND THRU 4TH

PREPARED BY:

AGNOLI
BARBER &
BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34108
Lee County: Suite 101, 1625 Bandy Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and EB 3664

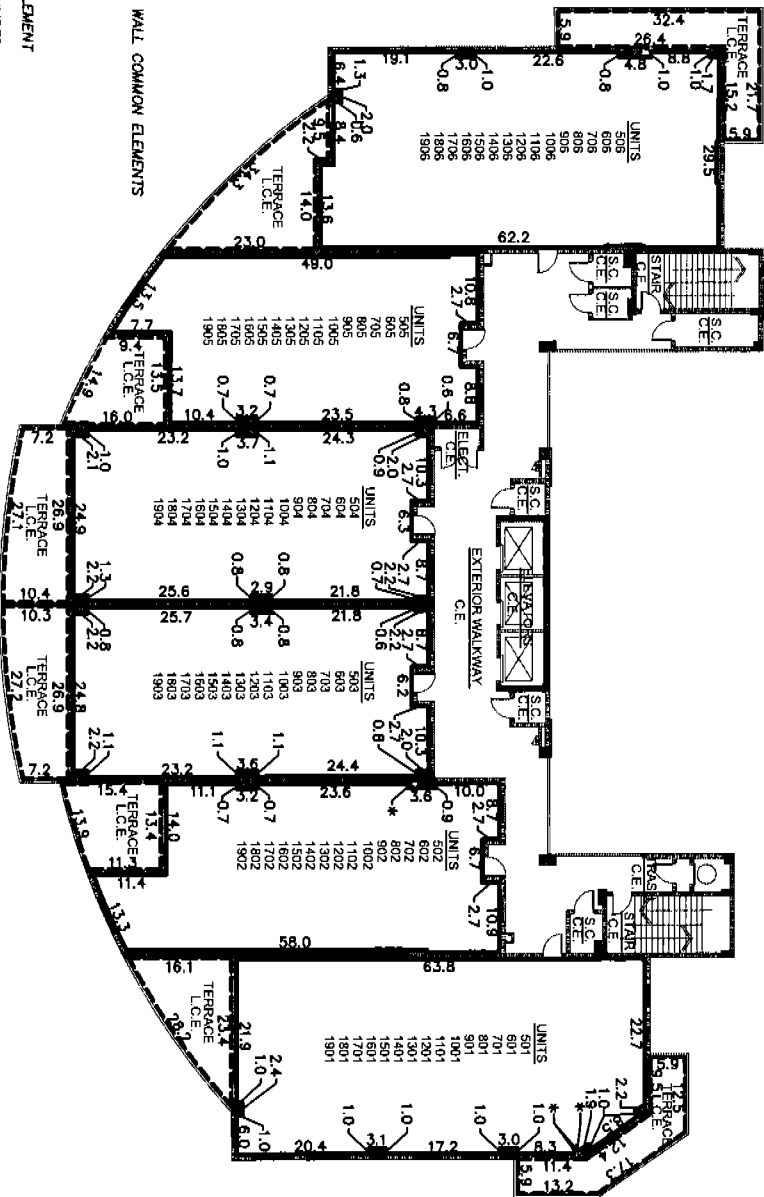
DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-C06A

BEAU RIVAGE, A CONDOMINIUM

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS.
2. INDICATES LOCATION OF THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.671
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 59°04'00" W.
7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS, LYING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
11. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
13. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
14. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
15. LANDSCAPING, CONDUITS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE TV, (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
16. * = UNABLE TO MEASURE
17. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.
- 18.

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - CE COMMON ELEMENT
 - SC STORAGE CLOSET
 - L.C.E. LIMITED COMMON ELEMENT
 - # INDICATES LEVEL NUMBER



SCALE: 1" = 30'

TYPICAL FLOORS 5TH THRU 19TH

PREPARED BY:

AGNOI
BARBER &
BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34106
Lee County: Suite 101, 1625 Bendy Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and EB 3664

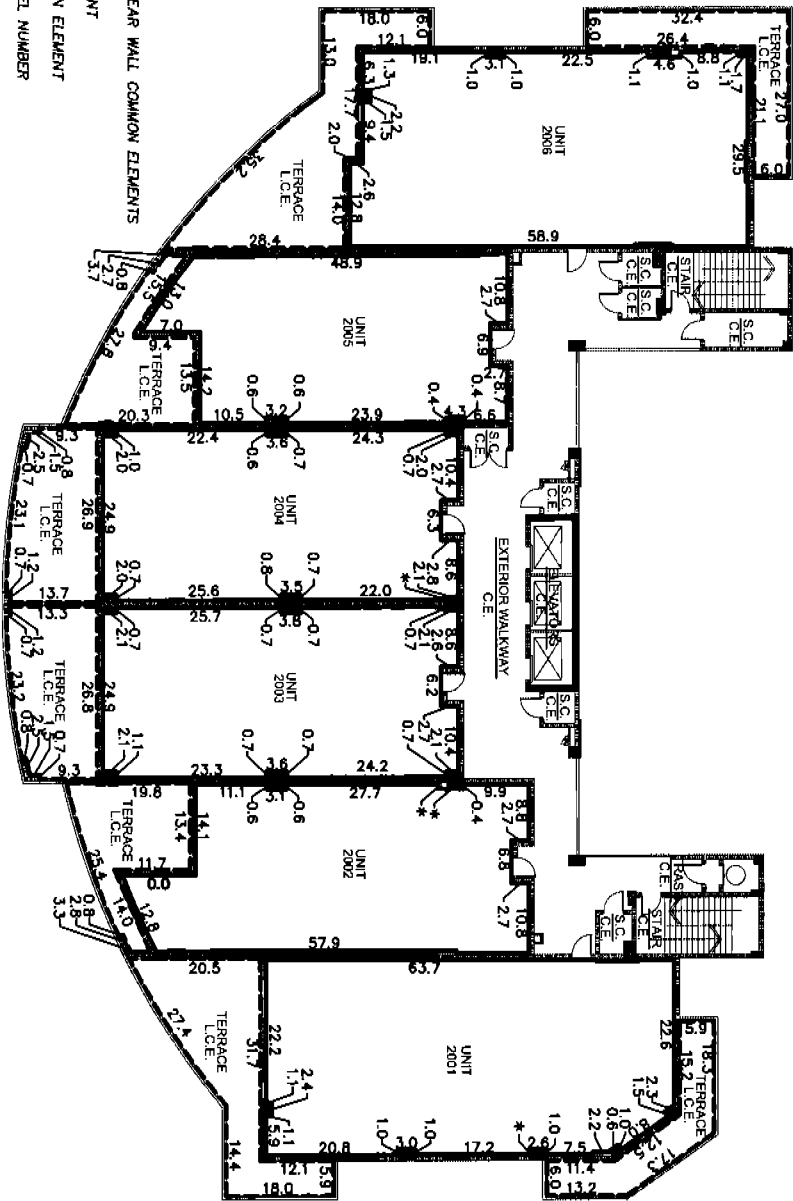
DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD7A

BEAU RIVAGE, A CONDOMINIUM

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS. INDICATES LOCATION OF
2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.671
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 89°04'00" W.
7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS, LYING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
11. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
13. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
14. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
16. LANDSCAPING, CONDUITS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE, TV, FINISHED OR UNFINISHED FLOORS, FINISHED OR UNFINISHED CEILINGS AND COMMON ELEMENTS OR LIMITED COMMON ELEMENTS HAVE BEEN OMITTED FROM THE EXHIBIT "1".
17. * = UNABLE TO MEASURE
18. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - # INDICATES LEVEL NUMBER
 - S.C. STORAGE CLOSET



SCALE: 1" = 30'

PREPARED BY:

AGNOLI
BARBER & BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
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Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and EB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD8A

20TH FLOOR PENTHOUSE LEVEL 1

BEAU RIVAGE, A CONDOMINIUM

EXHIBIT "1"
SHEET 9 OF 17

CONDOMINIUM PLAT BOOK PAGE

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

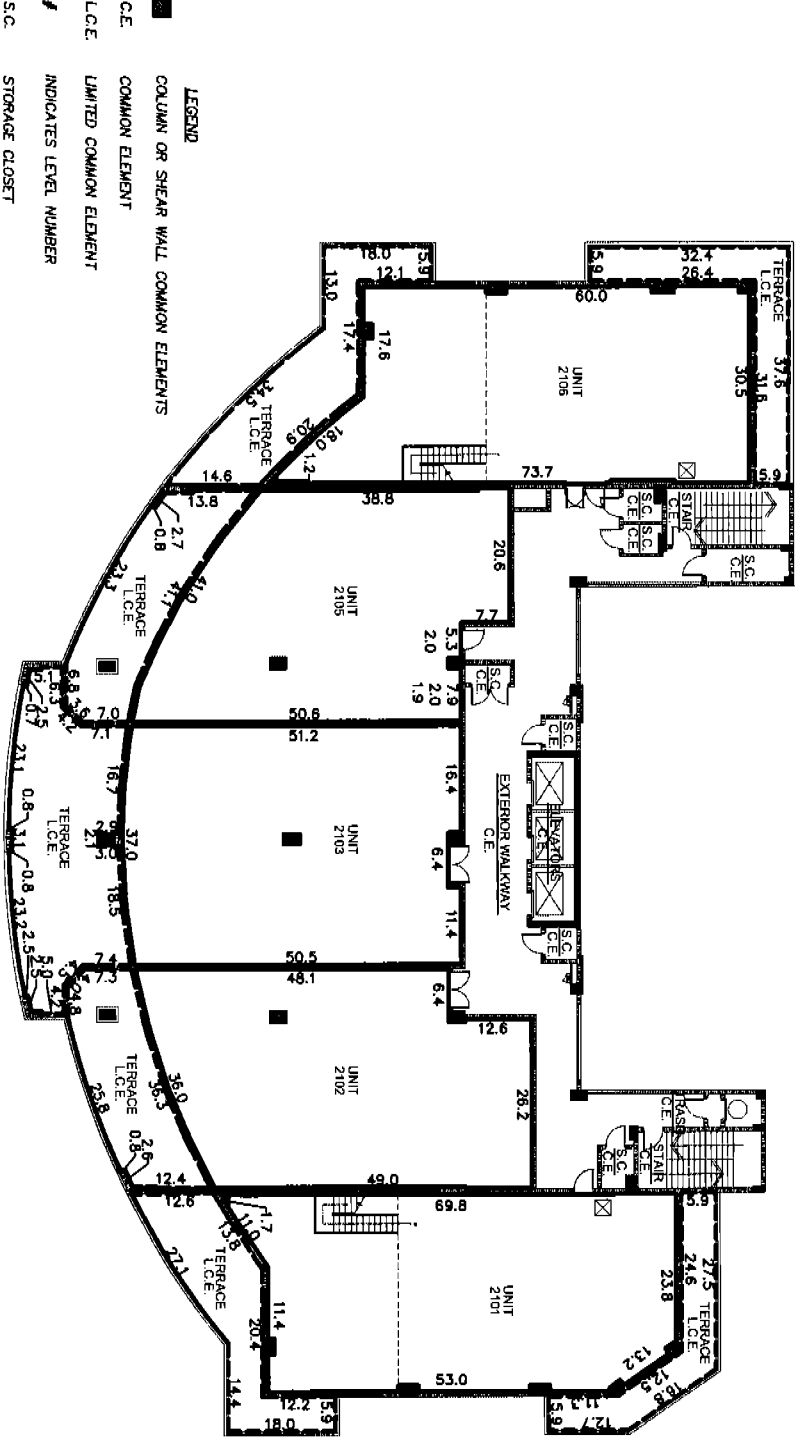
1. THE BOUNDARIES OF THE UNITS. INDICATES LOCATION OF
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12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
13. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
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DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-039A



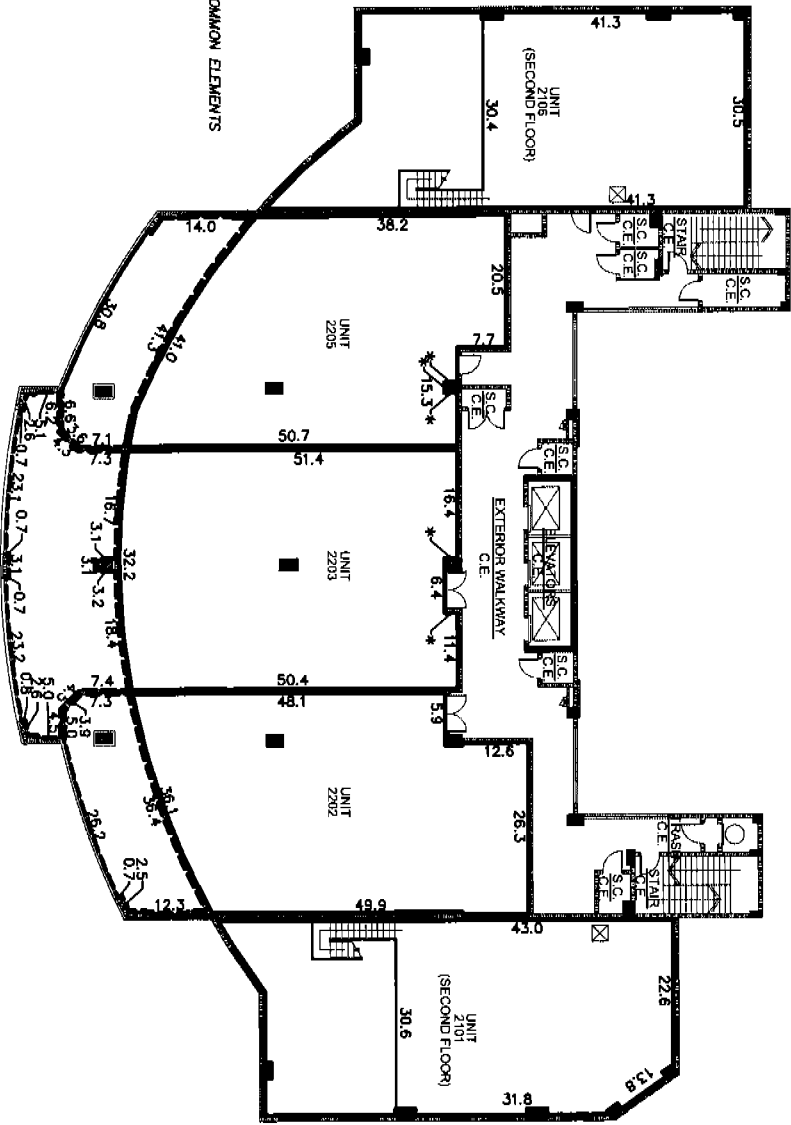
21ST FLOOR PENTHOUSE LEVEL II

BEAU RIVAGE, A CONDOMINIUM

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

- 1. THE BOUNDARIES OF THE UNITS.
- 2. INDICATES LOCATION OF THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
- 3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
- 4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
- 5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.671 BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 89°04'00" W.
- 6. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 7. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
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- 11. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
- 12. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
- 13. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
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- 15. LANDSCAPING, CONDUITS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE T.V. (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
- 16. * = UNABLE TO MEASURE
- 17. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.
- 18.

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - COMMON ELEMENT
 - LIMITED COMMON ELEMENT
 - INDICATES LEVEL NUMBER
 - STORAGE CLOSET



SCALE: 1" = 30'

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Certificate of Authorization Nos. LB 3864 and EB 3864

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD10A

22ND FLOOR PENTHOUSE LEVEL III

BEAU RIVAGE, A CONDOMINIUM

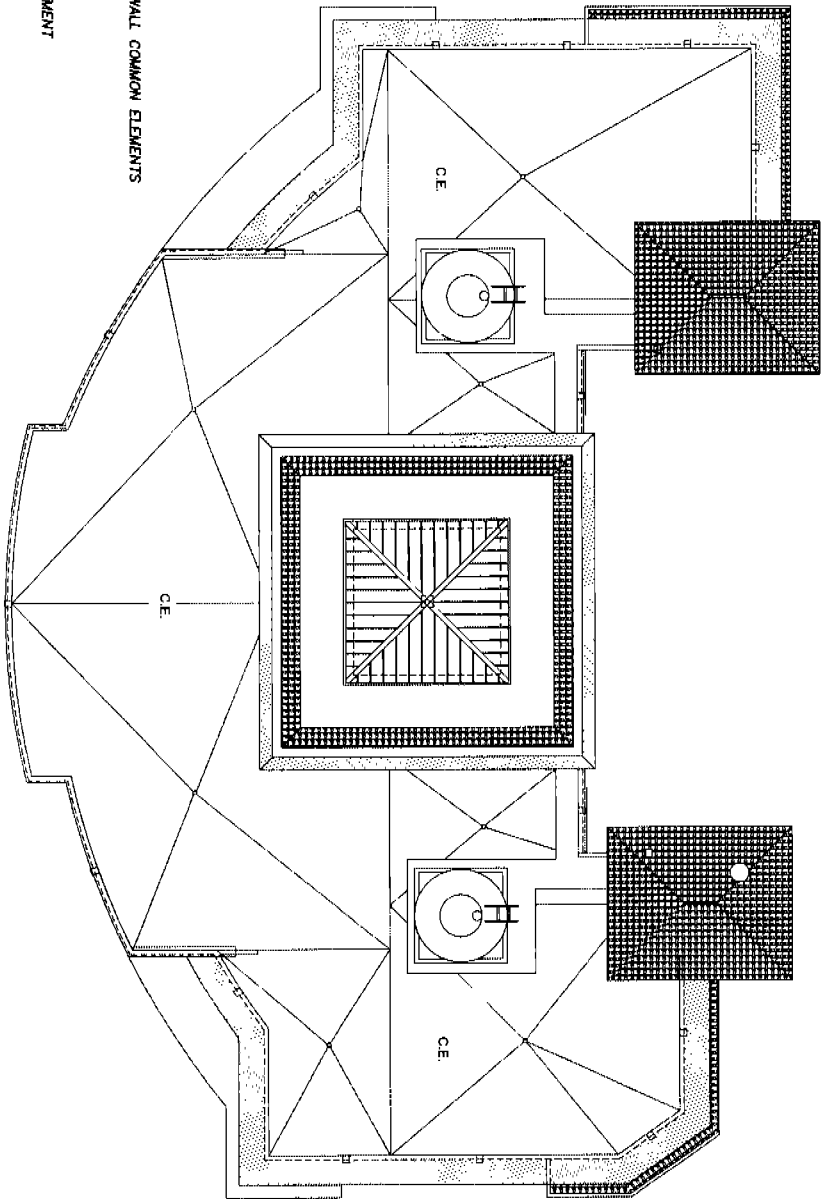
SCALE: 1" = 30'

EXHIBIT "1"
SHEET 11 OF 17

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. INDICATES LOCATION OF THE BOUNDARIES OF THE UNITS.
2. INDICATES LOCATION OF THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
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5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.677.
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 59°04'00" W. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
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11. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
12. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
13. THE BOUNDARY OF EACH FLOOR AND CEILING IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS.
14. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DESIGNATIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
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- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT



ROOF PLAN

PREPARED BY:

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Certificate of Authorization Nos. LB 3664 and EB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD11A

CONDOMINIUM PLAT BOOK_____PAGE_____

EXHIBIT "1"
SHEET 12 OF 17

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

	COLUMN OR SHEAR WALL COMMON ELEMENTS
C.E.	COMMON ELEMENT
L.C.E.	LIMITED COMMON ELEMENT

COMMON ELEMENTS

236'-0" ♦ 254.4

ROOF SLAB

222'-0" ♦ 232.4

22nd FLOOR - PENHOUSE 3

208'-0" ♦ 218.3

21st FLOOR - PENHOUSE 2

194'-0" ♦ 204.3

20th FLOOR - PENHOUSE 1

184'-0" ♦ 194.3

19th FLOOR

174'-0" ♦ 184.2

18th FLOOR

164'-0" ♦ 174.2

17th FLOOR

154'-0" ♦ 164.1

16th FLOOR

144'-0" ♦ 154.1

15th FLOOR

134'-0" ♦ 144.2

14th FLOOR

124'-0" ♦ 134.2

13th FLOOR

114'-0" ♦ 124.1

12th FLOOR

104'-0" ♦ 114.1

11th FLOOR

94'-0" ♦ 104.1

10th FLOOR

84'-0" ♦ 94.1

9th FLOOR

74'-0" ♦ 84.1

8th FLOOR

64'-0" ♦ 74.0

7th FLOOR

54'-0" ♦ 64.0

6th FLOOR

44'-0" ♦ 54.0

5th FLOOR

34'-0" ♦ 44.0

4th FLOOR

24'-0" ♦ 34.0

3rd FLOOR

14'-0" ♦ 23.9

2nd FLOOR

0'-0" ♦ 10.0

1st FLOOR

1. THE BOUNDARIES OF THE UNITS. INDICATES LOCATION OF
2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.). INDICATES LOCATION OF
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1928, USING BENCH MARK V-241, ELEVATION = 7.671
6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 89°04'00" W.
7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS, LYING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
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12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
13. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
14. FINISHED SURFACE OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
16. LANDSCAPING, CONSULTS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE TV, (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
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**AGNOLI
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BRUNDAGE, INC.**

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Certificate of Authorization Nos. LB 3604 and EB 3664

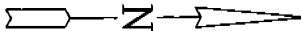
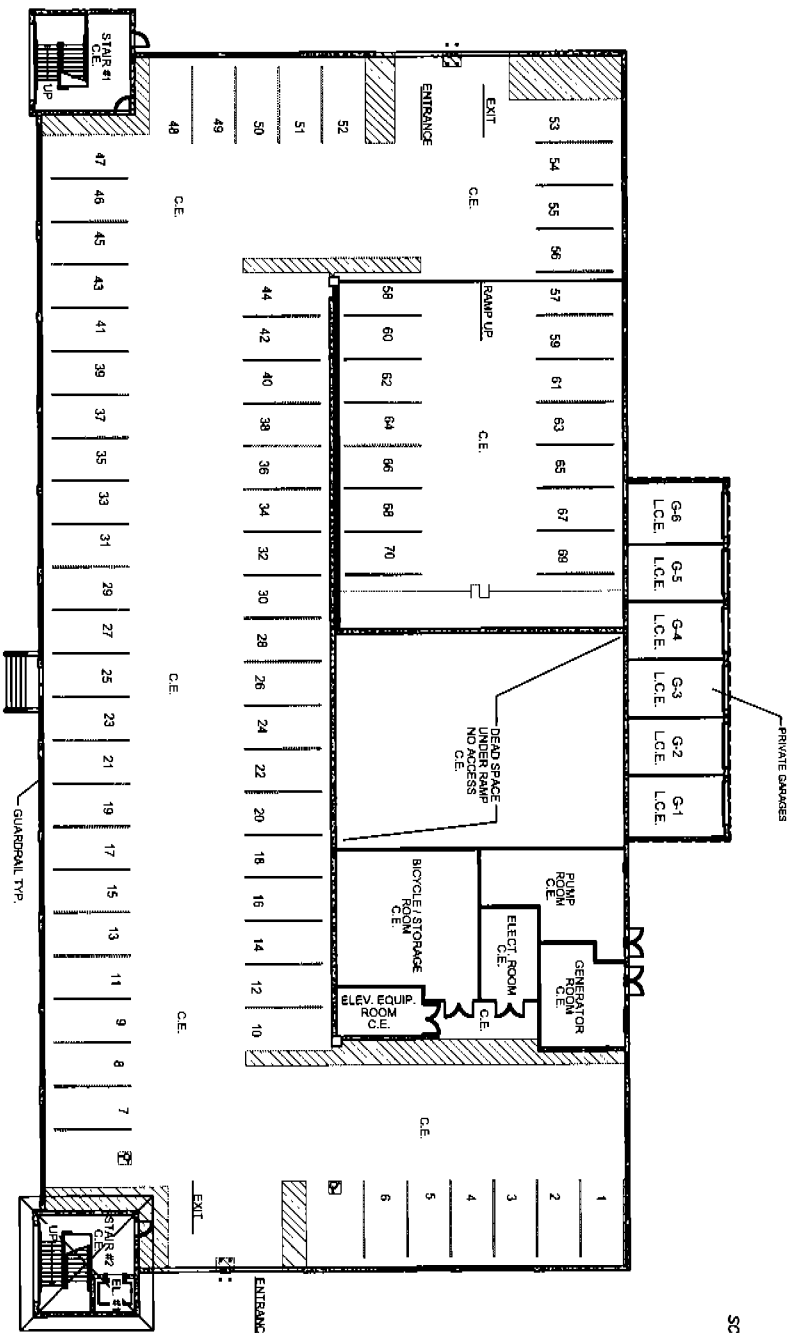
DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD12A

BEAU RIVAGE, A CONDOMINIUM

EXHIBIT "1"
SHEET 13 OF 17

CONDOMINIUM PLAT BOOK PAGE

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - EL. ELEVATOR



SCALE: 1" = 40'

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS INDICATES LOCATION OF
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11. THE PERMETRIC BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED SURFACE OF THE WALLS.
12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED SURFACE OF THE FLOORS AND CEILINGS ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPLICABLE TO SAID UNIT.
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16. C.A. = COMMON AREAS
17. * = UNABLE TO MEASURE
18. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.
- 19.

PREPARED BY:

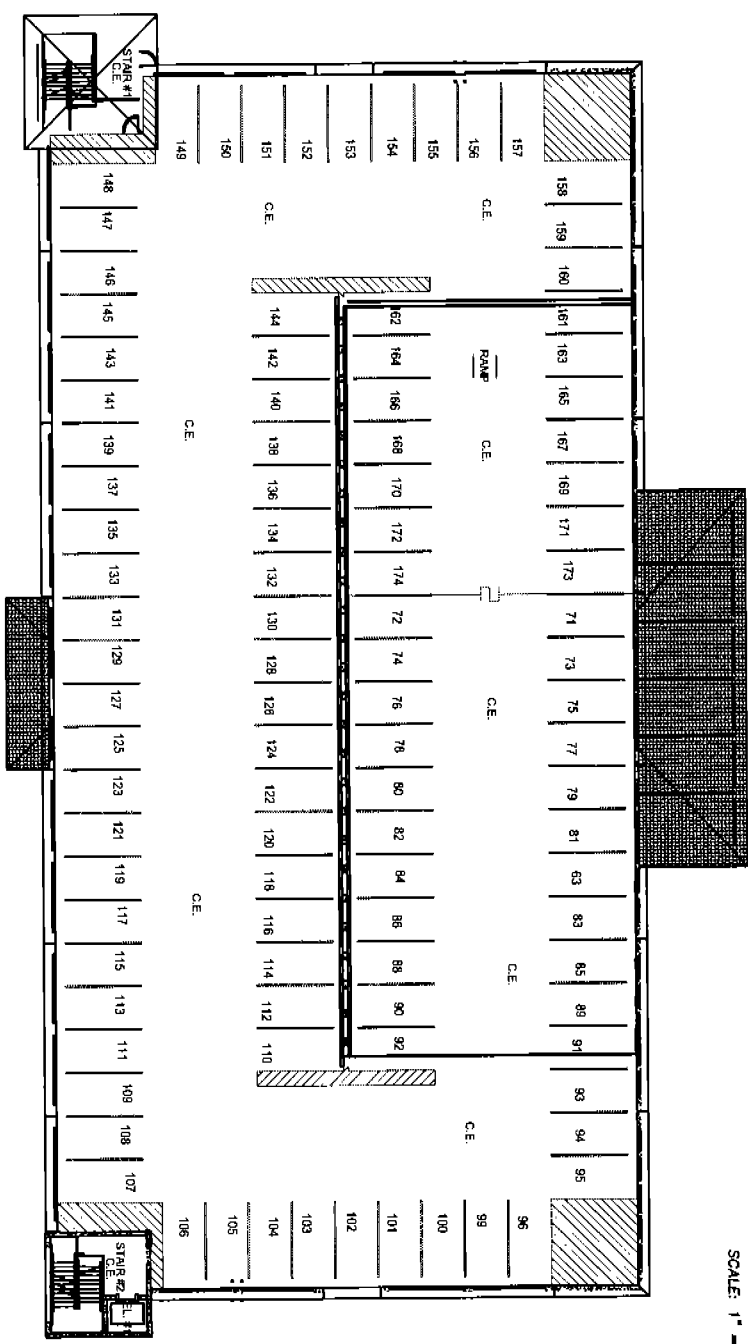
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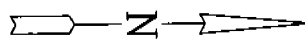
1ST FLOOR PARKING GARAGE

BEAU RIVAGE, A CONDOMINIUM

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - E. ELEVATOR



SCALE: 1" = 40'



- SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"
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 19. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

PREPARED BY:

AGNOLI
BARBER &
BRUNDAGE, INC.

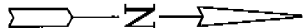
Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34106
Lee County: Suite 101, 1635 Bandy Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3864 and EB 3864

DATE: OCTOBER 18, 2004 PROJECT NO. 8145 ACAD NO. 8902-CD14A

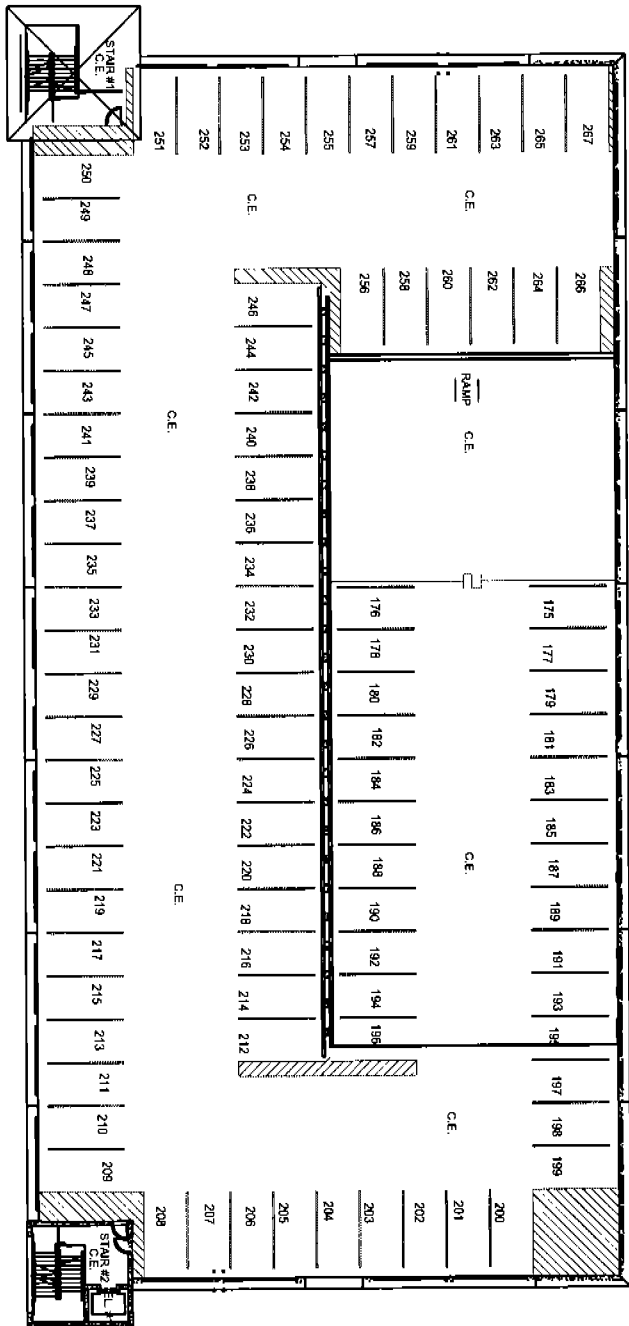
2ND FLOOR PARKING GARAGE

BEAU RIVAGE, A CONDOMINIUM

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - EL. ELEVATOR



SCALE: 1" = 40'



- SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"
1. INDICATES LOCATION OF THE BOUNDARIES OF THE UNITS.
 2. INDICATES LOCATION OF THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.).
 3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
 4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
 5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1928, USING BENCH MARK V-241, ELEVATION = 7.677.
 6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 59°4'00" W.
 7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
 9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
 10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED UNFINISHED BOUNDARY OF EACH UNIT, INCLUDING THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
 11. THE PLANE OF THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE WALLS.
 12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
 13. THE BOUNDARY OF EACH FLOOR AND CEILING IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
 14. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
 15. LANDSCAPING, CONDUITS, WIRING (PHONE, ELECTRIC, ETC.), DUCTS, PLUMBING, CABLE T.V. (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN LIMITED FROM THE EXHIBIT "1".
 16. C.A. = COMMON AREAS
 17. *
 18. * = UNABLE TO MEASURE
 19. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

PREPARED BY:

AGNOLI
BARBER &
BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, North Naples, FL 34108
Lee County: Suite 101, 1625 Hendry Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3684 and BB 3684

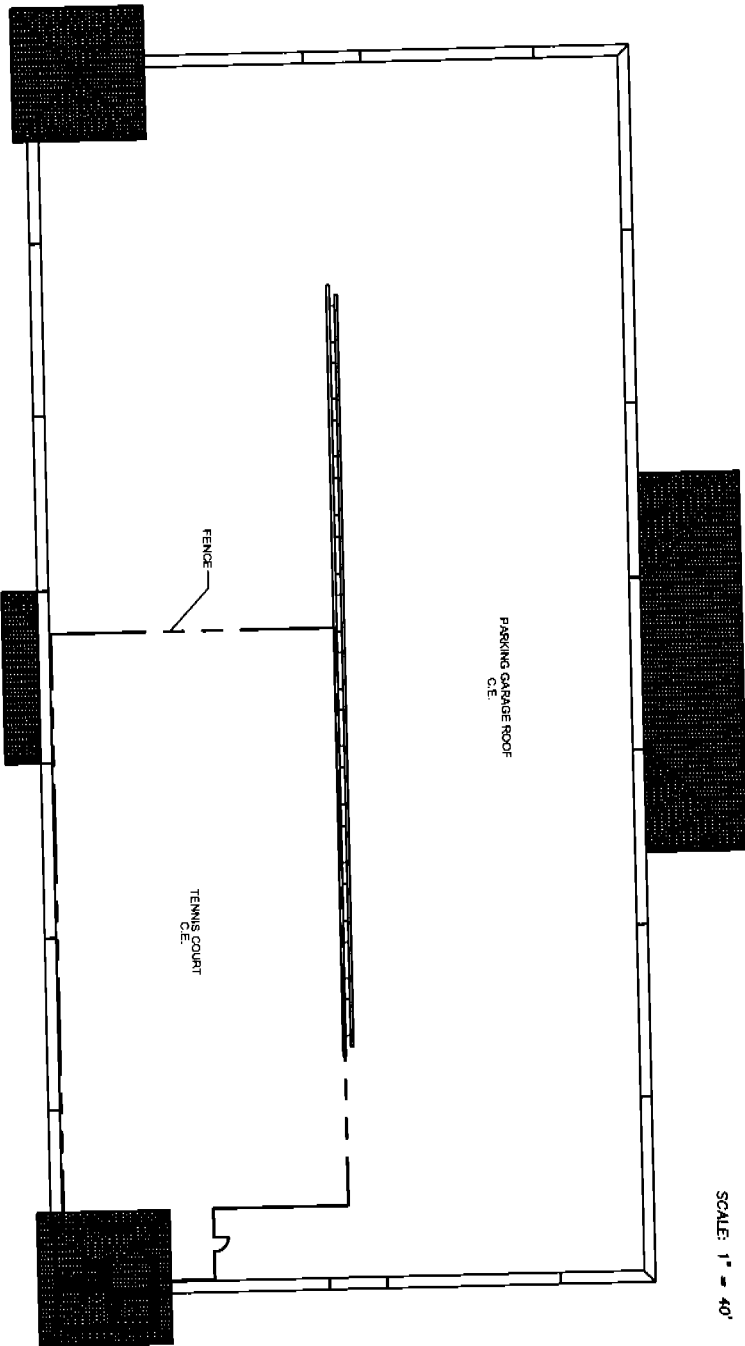
DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD15A

3RD FLOOR PARKING GARAGE

BEAU RIVAGE, A CONDOMINIUM

EXHIBIT "1"
SHEET 16 OF 17

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - EL. ELEVATOR



- SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"
1. THE BOUNDARIES OF THE UNITS INDICATES LOCATION OF
 2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.)
 3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
 4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS, EXCEPT WHERE APPLICABLE SECTIONS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
 5. ELEVATIONS HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.) 1929, USING BENCH MARK V-241, ELEVATION = 7.877
 6. BEARINGS ARE ASSUMED AND BASED ON THE NORTHWEST RIGHT-OF-WAY LINE OF FIRST STREET (S.R. 80) (PALM BEACH BLVD.) AS BEING S 59°04'00" W.
 7. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 8. ADDITIONAL UTILITY EASEMENTS MAY BE GRANTED BY THE DEVELOPER OR CONDOMINIUM ASSOCIATION AS REQUIRED.
 9. THIS FIRM HAS MADE NO ATTEMPTS TO LOCATE FOOTINGS AND/OR FOUNDATIONS.
 10. THE UPPER AND LOWER BOUNDARY (LIMIT) OF EACH UNIT SHALL BE THE PLANE OF THE UNDECORATED FINISHED SURFACE OF THE FLOORS AND CEILINGS, LING WITHIN THE PERIMETRICAL BOUNDARY OF EACH UNIT.
 11. THE PERIMETRICAL BOUNDARY OF EACH UNIT SHALL BE THE VERTICAL PLANE OF THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS.
 12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED FINISHED SURFACE OF THE FLOORS AND CEILINGS.
 13. THE TERRACES AND COMMON AREAS ARE DESIGNATED IN THIS EXHIBIT "1" ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPROPRIATE TO SAID UNIT.
 14. THE BOUNDARY OF EACH TERRACE FLOOR AND CEILING IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS.
 15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS DAINED HERETO THIS EXHIBIT "1".
 16. LANDSCAPING, CONDUITS, WIRING, ELECTRIC, F.P.S. DUCTS, PLUMBING, CABLE TV, OR PROVIDED OR OTHER FACILITIES FURNISHING UTILITIES ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN LIMITED FROM THE EXHIBIT "1".
 17. C.A. = COMMON AREAS
 18. * = UNABLE TO MEASURE
 19. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

PREPARED BY:

AGNOIL
BARBER &
BRUNDAGE, INC.
Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamiami Trail, Naples, FL 34106
Lee County: Suite 101, 1625 Benders Street, Fort Myers, FL 33901
Certificate of Authorization Nos. LB 3664 and EB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD16A

PARKING GARAGE ROOF

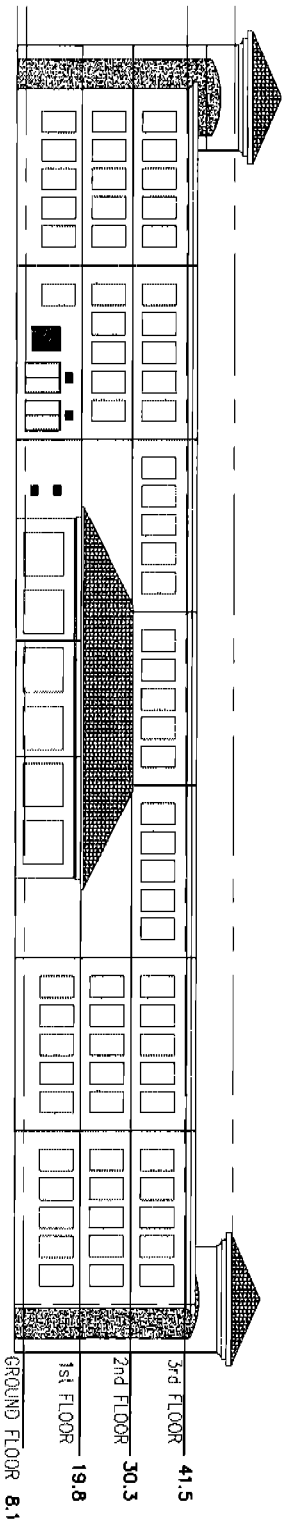
BEAU RIVAGE, A CONDOMINIUM

SCALE: 1" = 40'

SURVEYORS AND GENERAL NOTES FOR EXHIBIT "1"

1. THE BOUNDARIES OF THE UNITS. _____ INDICATES LOCATION OF
2. THE BOUNDARIES OF THE LIMITED COMMON ELEMENTS (L.C.E.). _____
3. SEE THE DECLARATION OF CONDOMINIUM FOR THE PRECISE DEFINITION, DESIGNATION AND LOCATION OF SAID BOUNDARIES.
4. EVERYTHING EXTERIOR TO THE UNIT BOUNDARIES IS COMMON ELEMENTS. REFER TO ATTACHED EXHIBITS IN THE DECLARATION OF CONDOMINIUM FOR THE DEFINITION AND DESIGNATION OF COMMON ELEMENTS.
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12. ELEVATIONS WHEN SHOWN ARE TO THE INTERIOR UNDECORATED UNFINISHED SURFACE OF THE FLOORS AND CEILINGS.
13. THE TERRACES AND BALCONIES ARE DESIGNATED IN THIS EXHIBIT "1" AS ADJACENT TO A UNIT ARE LIMITED COMMON ELEMENTS APPURTENANT TO SAID UNIT.
14. THE BOUNDARY OF EACH TERRACE AND/OR BALCONY IS THE INTERIOR UNDECORATED FINISHED SURFACE OF THE WALLS, FLOORS AND CEILINGS.
15. REFER TO THE DECLARATION OF CONDOMINIUM OF "BEAU RIVAGE" FOR A DETAILED DESCRIPTION OF RIGHTS, RESERVATIONS, DEFINITIONS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, EASEMENTS, RESTRICTIONS OR OTHER APPLICABLE COVENANTS JOINED HERETO THIS EXHIBIT "1".
16. LANDSCAPING CONDUITS (PHONE, ELECTRIC, ETC.) DUCTS, PLUMBING, CABLE TV, (IF PROVIDED) OR OTHER FACILITIES FURNISHING UTILITY SERVICES TO THE UNITS ARE COMMON ELEMENTS, OR LIMITED COMMON ELEMENTS AND HAVE BEEN OMITTED FROM THE EXHIBIT "1".
17. C.A. = COMMON AREAS
18. * = UNABLE TO MEASURE
19. SHEAR WALLS AND COLUMNS WITHIN EACH UNIT ARE COMMON ELEMENTS.

- LEGEND
- COLUMN OR SHEAR WALL COMMON ELEMENTS
 - C.E. COMMON ELEMENT
 - L.C.E. LIMITED COMMON ELEMENT
 - EL. ELEVATOR



PARKING GARAGE WEST ELEVATION PLAN

PREPARED BY:

AGNOLI
BARBER & BRUNDAGE, INC.

Professional engineers, planners, & land surveyors
Collier County: Suite 200, 7400 Tamland Trail, North Naples, FL 34108
Lee County: Suite 101, 1825 Bendy Street, Fort Myers, FL 33901
Certificate of Authorization No. LB 3664 and EB 3664

DATE: OCTOBER 18, 2004 PROJECT NO. 8148 ACAD NO. 8902-CD17A

EXHIBIT 2: ALLOCATION OF PERCENTAGE SHARES

The share, expressed as a percentage of the Common Elements, Common Expenses and Common Surplus appurtenant to each Unit is as follows:

UNIT TYPE	UNIT DESIGNATION	NUMBER OF BEDROOMS AND BATHROOMS		# OF UNITS	UNIT PERCENTAGE	EXTENSION
		Bedrooms	Bathrooms			
A	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, 1301, 1401, 1501, 1601, 1701, 1801, 1901, 2001	4	3	20	0.950%	18.994%
B	202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102, 1202, 1302, 1402, 1502, 1602, 1702, 1802, 1902, 2002	3	2	19	0.716%	13.609%
C	203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1303, 1403, 1503, 1603, 1703, 1803, 1903, 2003, 204, 304, 404, 504, 604, 704, 804, 904, 1004, 1104, 1204, 1304, 1404, 1504, 1604, 1704, 1804, 1904, 2004	3	3	38	0.722%	27.446%
D	205, 305, 405, 505, 605, 705, 805, 905, 1005, 1105, 1205, 1305, 1405, 1505, 1605, 1705, 1805, 1905, 2005	3	2	19	0.642%	12.206%
E	106, 206, 306, 406, 506, 606, 706, 806, 906, 1006, 1106, 1206, 1306, 1406, 1506, 1606, 1706, 1806, 1906, 2006	4	3	20	0.925%	18.505%
PH-A	2101	5	4	1	1.940%	1.940%
PH-B	2102, 2202	3	3	2	0.904%	1.808%
PH-C	2103, 2203	3	3	2	0.946%	1.892%
PH-D	2104, 2204	3	3	2	0.834%	1.668%
PH-E	2105	5	4	1	1.931%	1.931%
TOTALS:				124		100.000%

State of Florida



Department of State

I certify from the records of this office that BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on October 3, 2002.

The document number of this corporation is N02000007585.

I further certify that said corporation has paid all fees due this office through December 31, 2004, that its most recent annual report/uniform business report was filed on July 1, 2004, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-ninth day of September, 2004



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., a corporation organized under the laws of the State of Florida, filed on October 3, 2002, as shown by the records of this office.

The document number of this corporation is N02000007585.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-ninth day of September, 2004



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

Oct. 3. 2002 2:24PM

FAX AUDIT NUMBER: H02000207628 7

FILED/13
No. 8285
02 OCT -3 AM 7:32
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION
FOR
BEAU RIVAGE CONDOMINIUM
ASSOCIATION, INC.**

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

**ARTICLE 1.
NAME**

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

**ARTICLE 2.
OFFICE**

The principal office and mailing address of the Association shall be 2797 First Street, Fort Myers, Florida 33916, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act.

**ARTICLE 3.
PURPOSE**

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

**ARTICLE 4.
DEFINITIONS**

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

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FAX AUDIT NUMBER: H02000207628 7

**ARTICLE 5.
POWERS**

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

5.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.

5.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in conflict with the Act), and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

(a) To make and collect Assessments and other charges against members as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.

(b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.

(c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and/or Association Property, and other property acquired or leased by the Association.

(d) To purchase Insurance upon the Condominium Property and Association Property and insurance for the protection of the Association, its officers, directors and Unit Owners.

(e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Association Property and for the health, comfort, safety and welfare of the Unit Owners.

(f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.

(g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property and Association Property.

(h) To contract for the management and maintenance of the Condominium Property and/or Association Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the

ARTICLES OF INCORPORATION

-2-

FAX AUDIT NUMBER: H02000207628 7

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Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(i) To employ personnel to perform the services required for the proper operation of the Condominium and the Association Property.

(j) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi- governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, appoints and designates the Board of Directors of the Association as such Owner's agent and attorney-in-fact to execute, any and all such documents or consents.

5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).

5.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By- Laws.

ARTICLE 6. MEMBERS

6.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.

6.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.

ARTICLES OF INCORPORATION

-3-

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6.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast the aggregate number of votes attributable to all Units owned.

6.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

ARTICLE 7. TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 8. INCORPORATOR

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

<u>Name</u>	<u>Address</u>
Howard J. Vogel	100 S.E. Second Street, Suite 2900 Miami, Florida 33131

ARTICLE 9. OFFICERS

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

<u>Name</u>	<u>Address</u>
President: Robert A. MacFarlane	One Odell Plaza Yonkers, New York 10701
Vice President: Robert M. Kohn	Sherwood Glen Way West Palm Beach, Florida 33415
Vice President and Secretary-Treasurer: Mark MacFarlane	One Odell Plaza Yonkers, New York 10701

ARTICLES OF INCORPORATION

-4-

FAX AUDIT NUMBER: H02000207628 7

FAX AUDIT NUMBER: H02000207628 7

ARTICLE 10. DIRECTORS

10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors, except those appointed by the Developer, must be members of the Association.

10.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

10.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

10.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.

10.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>Name</u>	<u>Address</u>
Robert A. MacFarlane	One Odell Plaza Yonkers, New York 10701
Robert M. Kohn	Sherwood Glen Way West Palm Beach, Florida 33415
Mark MacFarlane	One Odell Plaza Yonkers, New York 10701

10.6 Standards. A Director shall discharge his duties as a director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or a Committee of which the Director is not a

ARTICLES OF INCORPORATION

-5-

FAX AUDIT NUMBER: H02000207628 7

FAX AUDIT NUMBER: H02000207628 7

member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

ARTICLE 11. **INDEMNIFICATION**

11.1 Indemnities. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

11.3 Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

11.4 Determination of Applicability. Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that

ARTICLES OF INCORPORATION

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FAX AUDIT NUMBER: H02000207628 7

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Indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;

(c) By Independent legal counsel:

1. selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

2. if a quorum of the Directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or

(d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.

11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph 11.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

11.6 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.

11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer,

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employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or

(c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.

11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

11.9 Application to Court. Notwithstanding the failure of a Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, committee member, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

(a) The director, officer, committee member, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;

(b) The director, officer, committee member, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or

(c) The director, officer, committee member, employee or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 11.1, subsection 11.2 or subsection 11.7, unless (i) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed

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

11.10 Definitions. For purposes of this Article, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.

11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE 12. BY-LAWS

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

ARTICLE 13. AMENDMENTS

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

13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in the Act. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

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13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).

13.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 5.3, 5.4 or 5.5 or the Article entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer and/or Institutional First Mortgagees, unless the Developer and/or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this paragraph 13.3 shall be effective.

13.4 Developer Amendments. To the extent lawful, the Developer may at any time and from time to time amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.

13.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Lee County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

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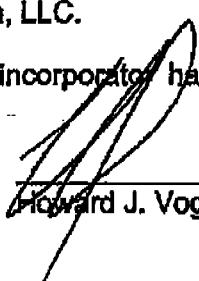
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ARTICLE 14.
INITIAL REGISTERED OFFICE:
ADDRESS AND NAME OF REGISTERED AGENT

The street address of the initial registered office of this corporation is c/o Registered Agents of Florida, LLC, 100 S.E. Second Street, Suite 2900, Miami, Florida 33131-2130 and the name of the initial registered agent of this corporation at that address is Registered Agents of Florida, LLC.

IN WITNESS WHEREOF, the incorporator has executed these Articles as of October 3, 2002.

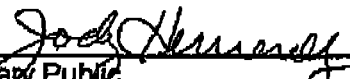


Howard J. Vogel

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me on Oct. 3, 2002, by Howard J. Vogel, who is either personally known to me, or produced _____ as identification.

My Commission Expires:



Notary Public,
State of Florida at Large



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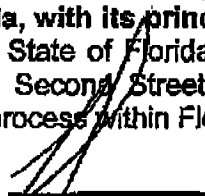
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**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE
FOR THE SERVICE OF PROCESS WITHIN FLORIDA, NAMING
AGENT UPON WHOM PROCESS MAY BE SERVED**

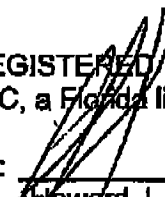
In compliance with Section 48.091, Florida Statutes, the following is submitted:

**BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC., desiring to organize or
qualify under the laws of the State of Florida, with its principal place of business at
2797 First Street, Fort Myers, Florida 33916, State of Florida, has named Registered
Agents of Florida, LLC, located at 100 S.E. Second Street, Suite 2900, Miami, FL
33131-2130, as its agent to accept service of process within Florida.**


Howard J. Vogel, Incorporator
Dated: October 3, 2002

Having been named to accept service of process for the above stated
Corporation, at the place designated in this Certificate, I hereby agree to act in this
capacity, and I further agree to comply with the provisions of all statutes relative to the
proper and complete performance of my duties.

**REGISTERED AGENTS OF FLORIDA,
LLC, a Florida limited liability company**

By: 
Howard J. Vogel
Title: Vice President
Dated: October 3, 2002

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EXHIBIT "4"

BY-LAWS

OF

BEAU RIVAGE

CONDOMINIUM ASSOCIATION, INC.

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

1. Identity. These are the By-Laws of BEAU RIVAGE CONDOMINIUM ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation.
 - 1.1 Fiscal Year. The fiscal year of the Association shall be the twelve month period commencing January 1st and terminating December 31st of each year.
 - 1.2 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. Definitions. For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration of Beau Rivage, a Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. Members.
 - 3.1 Annual Meeting. The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors, and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of November following the year in which the Declaration is filed.
 - 3.2 Special Meetings. Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written petition from a majority of the members of the Association. Such petition shall state the purpose(s) of the meeting. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing: (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 10.1 of these By-Laws; and (ii) as to special meetings regarding recall of Board members, reference should be made to Section 4.3 of these By-Laws.

3.3 Participation by Unit Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Owner to speak on such items in its discretion. Every Unit Owner who desires to speak at a meeting, may do so, provided that the Unit Owner has filed a written request with the Secretary of the Association not less than 24 hours prior to the scheduled time for commencement of the meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. The Association may also adopt other reasonable rules governing the frequency, duration and manner of Unit Owner statements. Any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:

- (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;
- (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.
- (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
- (d) At least twenty-four (24) hours prior written notice shall be given to the Secretary of the Association by any Unit Owner desiring to make an audio or video taping of the meeting.

3.4 Notice of Meeting; Waiver of Notice. Notice of a meeting of members (annual or special), stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property at least fourteen (14) continuous days prior to the annual meeting; no such posting is required in connection with special meetings of the membership, unless required by applicable law. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of members' meetings shall be posted; however, if there is no Condominium Property upon which notices can be posted, this requirement does not apply. In lieu of, or in addition to, the physical posting of the notice of any Board meeting on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system servicing the Association. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required under the Act. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and

comprehend the entire content of the notice and the agenda. The notice of the annual meeting shall also be hand delivered, sent by regular mail, or electronically transmitted to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail or by Electronic Transmission. The delivery, mailing or Electronic Transmission shall be to the address of the member as it appears on the roster of members. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address initially identified for that purpose by the Developer and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or if the Owners disagree, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice for either special or annual meetings, which notice must include an agenda, shall be mailed or delivered to each Unit Owner not less than fourteen (14) days prior to the date of the meeting and shall be posted in a conspicuous place on the Condominium Property or Association Property at least fourteen (14) continuous days preceding the meeting.

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

Notice of Board meetings, member meetings (except those called in whole or in part to recall Board members under Section 718.112(2)(j) of the Act) and committee meetings may be given by Electronic Transmission to Unit Owners who consent to receive notice by such means.

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

Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the Unit Owners is inapplicable to meetings between the board or a committee and the Association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.

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

3.6 Voting.

- (a) Number of Votes. Except as provided in Section 3.11 hereof, in any meeting of members, the Owners shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the votes entitled to be cast by the members and not a majority of the members themselves and shall further mean more than fifty percent (50%) of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.
- (c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of members. If a Unit is owned by more than one person (including husbands and wives), the vote may be cast by any Owner of the Unit; provided, however, that in the event a dispute arises between the Owners as to how the vote for Unit shall be cast, or in the event the Owners are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to cast the vote for the Unit on the matter being voted upon at that meeting, but their presence shall be counted for purposes of determining the existence of a quorum. For purposes of this paragraph, the principals or partners of any entity (other than a corporation) owning a Unit shall be deemed Owners of the Unit, and the directors and officers of a corporation owning a Unit shall be deemed Owners of the Unit. If any Owner of a Unit appears at any meeting by proxy, and another co-owner appears in person, the vote for the Unit shall be cast by the Owner appearing in person, and the proxy shall be deemed revoked.

- 3.7 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as specifically provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Bureau. Limited proxies shall be permitted for votes taken to: waive or reduce reserves; waive the financial reporting requirements of Section 718.111(13) of the Act, amend the Declaration, Articles or these By-Laws; or for any other matter requiring or permitting a vote of Unit Owners. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawfully adjointed meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized

to vote for such person(s) and shall be filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. The proxy form must conform to any requirements of the Condominium Act and applicable administrative rules as amended from time to time. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Developer). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.

- 3.8 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.9 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
- (a) Call to order by the President or by the Vice President or by the chairman of the meeting;
 - (b) Collection of election ballots;
 - (c) Appointment by the President of a chairman of the meeting (who need not be a member or a director), unless appointed by the President or Vice President prior to the meeting);
 - (d) Proof of notice of the meeting or waiver of notice;
 - (e) Reading of minutes;
 - (f) Reports of officers;
 - (g) Reports of committees;
 - (h) Appointment of inspectors of election;
 - (i) Determination of number of directors to be elected;
 - (j) Election of directors;
 - (k) Unfinished business;
 - (l) New business;
 - (m) Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

- 3.10 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or which may be taken at any annual or special meeting of members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which all members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

4. Directors.

- 4.1 Membership. The affairs of the Association shall be governed by a Board of Directors, initially consisting of three (3) Directors, all of whom shall be designated by the Declarant. The Board shall automatically be expanded to five (5) Directors at such time as members other than the Developer are entitled to elect a majority of the Directors. Directors must be natural persons who are eighteen (18) years of age or older. Directors may not vote at Board meetings by proxy or by secret ballot.
- 4.2 Election of Directors. Election of directors shall be held at the annual members' meeting, except as herein provided to the contrary. Not less than sixty (60) days prior to a scheduled election, the Association shall mail, deliver or electronically transmit to each Unit Owner entitled to vote, a first notice of the date of election. Any Unit Owner or other eligible person desiring to be a candidate for the Board must give written notice to the Secretary of the Association not less than forty (40) days prior to the scheduled election. Any eligible candidate may furnish the Association with an information sheet which shall be no larger than 8½ inches by 11 inches. The candidate's information sheet, if any, must be received by the Secretary by no later than thirty-five (35) days prior to the election. The Association shall have no liability for the contents of this information sheet prepared by the candidate. Together with the written notice and agenda as set

forth in Section 3, the Association shall then mail, deliver or electronically transmit a second notice of the election to all Unit Owners entitled to vote therein, together with an agenda and a ballot which shall list all eligible candidates. Upon request of a candidate, the Association shall include the information sheet, with the mailing, delivery or transmission of the agenda and ballot, with the costs of mailing, delivery or Electronic Transmission and copying to be borne by the Association. The Association shall have no liability for the information sheets provided by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

The election of directors shall be by written ballot or voting machine. No Unit Owner shall permit any other person to cast his ballot, and any such ballots improperly cast shall be deemed invalid. The Association shall follow any administrative rules applicable to establishing procedures for giving notice by Electronic Transmission and safeguarding the secrecy of ballots. Proxies shall in no event be used in electing the Board, either in general elections or elections to fill vacancies caused by recall, resignation or otherwise, unless otherwise provided in the Act. Elections shall be decided by a plurality of those ballots and votes cast. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of members of the Board. There shall be no cumulative voting. Notwithstanding the provisions of this Section, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of directors by members (as addressed in subsection (b) below), vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining directors at any Board meeting, provided that all vacancies in directorships to which directors were appointed by the Developer pursuant to the provisions of paragraph 4.15 hereof shall be filled by the Developer without the necessity of any meeting.
- (b) Any director elected by the members (other than the Developer) may be removed by concurrence of a majority of the voting interests of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of all voting interests. The vacancy in the Board of Directors so created shall be filled by the members at a special meeting of the members called for such purpose, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new director to take the place of the one removed. The conveyance of all Units owned by a director in the Condominium (other than appointees of the Developer or directors who were not Unit Owners) shall constitute the resignation of such director.
- (c) Anything to the contrary herein notwithstanding, until a majority of the directors are elected by members other than the Developer of the Condominium, neither the first directors of the Association, nor any directors replacing them, nor any directors named by the Developer, shall be subject to removal by members other than the Developer. The first

directors and directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.

- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws. Anything herein to the contrary notwithstanding, if a vacancy occurs on the Board of Directors as a result of the removal of any directors and a majority or more of the Board of Directors is removed, the vacancies shall be filled in accordance with any procedural rules adopted pursuant to the Act.

- 4.4 Term. Except as provided herein to the contrary, the term of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. Notwithstanding the foregoing, any director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.
- 4.5 Organizational Meeting. The organizational meeting of newly elected or appointed directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary; provided, however, in the event the organizational meeting shall follow the annual meeting in which directors were newly elected or appointed, the notice of the annual meeting shall serve as notice of the organizational meeting if said notice properly provided for the organizational meeting to be held at that time.
- 4.6 Meetings. Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of meetings shall be given to each director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Meetings of the Board of Directors and any Committee thereof at which a quorum of the members of that Committee are present shall be open to all Unit Owners. Any Unit Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Bureau, subject to the restrictions in Section 3.3 of these By-Laws and any modifications thereof adopted from time to time by the Board. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Adequate notice of such meetings, which notice shall

specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in the event of an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board of Directors. Such emergency action shall be noticed and ratified at the next regular meeting of the Board of Directors. Notwithstanding the foregoing, written notice of any meeting of the Board at which nonemergency special assessments, or at which amendment to rules regarding Unit use will be considered, shall be mailed, delivered or electronically transmitted to all Unit Owners and posted conspicuously on the Condominium Property or Association Property upon which notices of Board meetings can be posted. If there is no Condominium Property or Association Property upon which notices can be posted, notices of Board meetings shall be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting to the Owner of each Unit. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. The Board may adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of Board and/or Committee meetings shall be posted. In lieu of, or in addition to, the physical posting of the notice of any Board meeting on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system servicing the Association. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required under the Act. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Special meetings of the directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the directors or where required by the Act.

- 4.7 Waiver of Notice. Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said director of notice. Attendance by any director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.
- 4.8 Quorum. A quorum at directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of directors is specifically required by applicable law, the Declaration, the Articles or these By-Laws. After a quorum has been established at a meeting, the subsequent withdrawal of members, so as to reduce the number of voting interests entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment. Notwithstanding the above, when some or all of the Board of Directors or members of a Committee meet by

telephone conference, those Board of Directors or members of a committee attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker shall be utilized so that the conversation of those Board of Directors or members of a Committee attending by telephone may be heard by the Board of Directors or members of a committee attending in person, as well as by any Unit Owners present at the meeting.

- 4.9 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required (e.g., with respect to budget adoption).
- 4.10 Joinder in Meeting by Approval of Minutes. The joinder of a director in the action of a meeting by signing and concurring in the minutes of that meeting shall not constitute a vote of that director on any of the business conducted at the meeting, nor shall such joinder allow the applicable director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding officer at Board meetings shall be the chairman of the Board if such an officer is elected; and if none, the President shall preside. In the absence of the presiding officer, the directors shall designate one of their members to preside.
- 4.12 Order of Business. If a quorum has been attained, the order of business at Board meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.

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

- 4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 4.14 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable.

- 4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units in the Condominium. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Upon the election of such director(s), the Developer shall forward to the Bureau of Standards and Registration of the Division of Florida Land Sales, Condominiums and Mobile Homes, or its successor (the "Bureau") the name and mailing address of the director(s) elected. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors: (a) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) three months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) seven (7) years after recordation of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer may transfer control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. The Board shall automatically be increased from three directors to five directors at the time the Developer transfers control of the Association to the Unit Owners. Provided at least seventy-five (75) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than sixty (60) days' notice of an election for the Unit Owners to elect such member or members of the Board of Directors. The election shall proceed as provided in Section 718.112(2)(d) of the Act. The notice may be given by any Unit Owner if the Association fails to do so.

At the time the Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and such Unit Owners shall accept control.

At that time (except as to subparagraph (g), which may be ninety (90) days thereafter) Developer shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable to the Condominium:

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

Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property.

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

5. Authority of the Board.

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

- (a) Operating and maintaining all Common Elements and the Association Property.
- (b) Determining the expenses required for the operation of the Association and the Condominium.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements and the Association Property.

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- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium and Association Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 15 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described herein and in the Declaration.
- (g) Purchasing, leasing or otherwise acquiring Units or other property, including, without limitation, Units at foreclosure or other judicial sales, all in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium and Association Property.
- (k) Making repairs, additions and improvements to, or alterations of, Condominium Property and Association Property, and repairs to and restoration of Condominium and Association Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium, including, without limitation, the power to make and collect Assessments, Charges and other levies of the Association.
- (m) Purchasing or leasing Units for use by resident superintendents and other similar persons.
- (n) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of Common Elements or the acquisition of real property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (n) is not repaid by

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the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit.

- (o) Subject to the provisions of Section 5.2 below, contracting for the management and maintenance of the Condominium and Association Property and authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments and Charges, preparation of financial statements and keeping of records, enforcement of rules and regulations, maintenance, repair, and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments and Charges, promulgation of rules and execution of contracts on behalf of the Association.
- (p) At its discretion, but within the parameters of the Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
- (q) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (r) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

5.2 Contracts. Any contract which is not to be fully performed within one (1) year after the making thereof, for the purchase, lease or renting of materials or equipment to be used by the Association in accomplishing its purposes, and all contracts for the provision of services, shall be in writing. If a contract for purchase, lease or renting materials or equipment, or for the provision of services, requires payment by the Association on behalf of the Condominium in the aggregate that exceeds five percent (5%) of the total annual budget of the Association, including reserves, the Association shall obtain competitive bids for the materials, equipment or services. Nothing contained herein shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association and contracts for attorneys, accountants, architects, engineers and landscape architects services shall not be subject to the provisions hereof. Further, nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency; nor shall the provisions hereof apply if the business entity with which the Association desires to contract is the only source of supply within the County. The Association may, if permitted under the Act, opt out of the requirements of this Section.

6. Officers.

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

immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer, director or manager who knowingly so solicits, offers to accept or accepts any thing or service of value, shall, in addition to all other rights and remedies of the Association and Unit Owners, be subject to a civil penalty in accordance with the Act. Notwithstanding the foregoing, this paragraph shall not prohibit an officer, director or manager from accepting services or items received in connection with trade fairs or education programs.

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

10.1 Budget.

- (a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium governed and operated by the Association (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of such Condominium(s) and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, if the Association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements, the budget or a schedule attached thereto shall show amounts budgeted therefor. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law or desired by the Board). The amount of reserves shall be computed by means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the members of the Association have, at a duly called meeting of the Association, voted to provide no reserves or less reserves than required hereby. Prior to transfer of control of the Association to Unit Owners other than the Developer, and if provided in the initial budget of the Association,

the Developer may vote to waive reserves or reduce the funding of reserves for each of the first two (2) fiscal years of the Association's operation, beginning with the fiscal year in which the Declaration of Condominium is initially recorded, after which time, reserves may only be waived or reduced upon the vote of a majority of non-Developer voting interests present at a duly called meeting of the Association. If a meeting of Unit Owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves, as included in the budget, shall go into effect. After turnover, the Developer may vote its voting interest to waive or reduce the funding of reserves. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures, unless their use for any other purposes is approved in advance by a vote of the majority of the voting interests voting in person or by limited proxy at a duly called meeting of the Association. Prior to turnover of control of the Association by the Developer to the Unit Owners other than the Developer, the Association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

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

- i Notice of Meeting. A copy of the proposed budget of Common Expenses shall be delivered, mailed or electronically transmitted to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting.
- ii Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days of adoption of the annual budget, a written application of at least ten percent (10%) of the Unit Owners. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. Each Unit Owner shall be given at least fourteen (14) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than a majority of all the Units (including Units owned by the Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

- iii Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors with respect to repair or replacement of the Condominium Property or with respect to anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation Assessments for improvements to the Condominium Property.
- iv Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of a majority of Unit Owners including the Developer.

- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 10.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

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

- 10.3 Special Assessments, Special Charges and Assessments for Capital Improvements. Special Assessments, Special Charges and Capital Improvement Assessments (as defined in the Declaration) shall be levied as provided in the Declaration and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments or Charges; provided, however, that any Special Assessment in excess of \$1,000.00 per Unit per Fiscal Year, shall require the approval of all Members present in person, or by proxy, or by absentee ballot, and any Special Assessment in excess of \$2,500.00 per Unit per Fiscal Year, shall require the approval of 90% of all Members present in person, or by proxy, or by absentee ballot. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in the notice of adoption of same. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future assessments.
- 10.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited separately in the Association's name. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the directors. All sums collected by the Association from Assessments, Charges or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. Notwithstanding the foregoing, reserve and operating funds of the Association shall not be commingled, unless combined for investment purposes.
- 10.5 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate the Assessments, for the remainder of the budget year, upon thirty (30) days' prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the Assessments for the balance of the budget year shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.
- 10.6 Fidelity Insurance. Fidelity insurance shall be obtained and maintained by the Association for all persons who control or disburse Association funds. The insurance policy or fidelity bond shall be in an amount equal to the greater of (i) the maximum funds that will be in the custody of the Association or its management agent at any one time, or (ii) such amounts as may be required, from time to time, under the Act. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The Association shall bear the cost of such bonding or insurance.
- 10.7 Accounting Records and Reports. The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them

shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments and Charges, the dates and amounts in which the Assessments and Charges come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within ninety (90) days following the end of the fiscal or calendar year, or annually on such date as is otherwise provided herein, the Association shall prepare and complete, or contract for the completion, of a complete financial report for the preceding fiscal year prepared in accordance with generally accepted accounting principals. Within twenty-one (21) days following completion of such report, but within one hundred and twenty (120) days after the end of the fiscal or calendar year, or other date as is otherwise provided herein, the Association shall mail or furnish by hand delivery to each Unit Owner a copy of such report or a notice that a copy of such report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of written request from a Unit Owner. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and
- (j) Reserves for capital expenditures, deferred maintenance, and any other category for which the Association maintains a reserve account or accounts.

10.8 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.

10.9 Notice of Meetings. Notice of any meeting where Assessments or Charges against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.

11. Inquiries of Unit Owners. Any inquiry of a Unit Owner shall be delivered by certified mail to the Board. The Board shall respond in writing to the Unit Owner within 30 days of receipt of the inquiry. The Board's response shall either give a substantive response to the Unit Owner, notify the inquirer that a legal opinion has been requested, or notify the Unit Owner that advice has been requested from the Bureau. If the Board requests advice from the Bureau, the Board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the Unit Owner. If a legal opinion is requested, the Board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. Notwithstanding anything contained herein to the contrary, the Association is only obligated to respond to one written inquiry per Unit in any given 30-day period. In such a case, any additional inquiry or inquiries will be responded to in the subsequent 30-day period, or periods, as applicable.
12. Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record, on the date notice of any meeting requiring their vote is given, shall be entitled to notice of and to vote at such meeting. However, any other Owner who, prior to such meeting, produces adequate evidence, as provided above, of their interest, and waives in writing notice thereof, shall also be entitled to vote at such meeting.
13. Parliamentary Rules. Except when specifically or impliedly waived by the chairman of a meeting (either of members or directors), Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Robert's Rules shall not be made so as to frustrate the will of the persons properly participating in said meeting.
14. Fining Procedure.
 - 14.1 Every Unit Owner and his family, guests, invitees, lessees and employees shall comply with the provisions of the Declaration, By-Laws, and the Rules and Regulations of the Association, as amended from time to time. Failure of a Unit Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to all other remedies, in the sole discretion of the Board of Directors, a fine or fines may be imposed upon a Unit Owner for failure of a Unit Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation in the Declaration, By-Laws, or Rules and Regulations.
 - 14.2 Prior to imposing any fine against a Unit Owner or tenant, the Unit Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Unit Owner or tenant of not less than 14 days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, By-Laws or Rules and Regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Unit Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. The hearing must be held before a committee of other Unit Owners. At the hearing, the Committee

shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Committee so determines, it may impose such fine as it deems appropriate by written notice to the Unit Owner or tenant. If the Committee does not agree with the fine, the fine may not be levied. The amount of any fine shall be determined by the Association and shall not exceed \$100.00 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. If the Unit Owner or tenant fails to attend the hearing as set by the Committee, the Unit Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Unit Owner or tenant. Any fine imposed by the Association shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days, after written notice of the Committee's decision at the hearing. If not paid when due all of the provisions of this Declaration relating to the late payment of monies owed to the Association shall be applicable except as otherwise provided by the Act, and provided that any such fines shall not become a lien on the Unit owned by the offending Unit Owner or its tenant. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

15. Amendments. Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner:

15.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

15.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors not present in person or by proxy at the meeting considering the amendment may express their approval by telephone conference, while Unit Owners not present in person at such a meeting may express their approval by proxy, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

(a) prior to turning over control of the Association to Unit Owners other than the Developer, by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than eighty percent (80%) of the entire Board of Directors; or

(b) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained.

15.3 Amendments by Board of Directors. Except as elsewhere provided herein or by the Act, the Board of Directors, upon the unanimous vote of all the directors, shall have the right, without the consent of the Unit Owners, to make the following amendments to these By-Laws: (i) amendments made to conform to the requirements of any Institutional First Mortgagee so that such mortgagee will make, insure, or guarantee first mortgage loans on the Units, (ii) amendments required by any governmental authority, or (iii) amendments made to conform the

provisions of these By-Laws to any provisions of the Act or any rule promulgated thereunder, or any other applicable statute or regulation now or hereafter adopted or amended, provided however that no such amendment shall be effective to impose any additional liability or obligation on the Developer.

- 15.4 Proviso. Notwithstanding anything herein or in the Articles or the Declaration to the contrary, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, unless the Developer joins in any such amendment. No amendment shall be made that is in conflict with the Articles or the Declaration. No amendment to this Section shall be valid.
- 15.5 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
- 15.6 Form of Amendments. None of these bylaws shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation shall be inserted immediately preceding the proposed amendment in substantially the following language; "Substantial rewording of Bylaws. See Bylaw _____ for present text."
16. Rules and Regulations. Attached hereto as Schedule A and made a part hereof are initial rules and regulations concerning the use of portions of the Condominium and Association Property. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned-over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
17. Official Records. From the inception of the Association, the Association shall maintain for the Condominium, a copy of each of the following, where applicable, which shall constitute the official records of the Association:
- (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;

- (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;
- (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
- (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- (e) A copy of the current rules and regulations of the Association;
- (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.
- (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and the numbers designated by Unit Owners for receiving notices sent by Electronic Transmission of those Unit Owners consenting to receive notice by Electronic Transmission. Such electronic mailing addresses and numbers shall be removed from the Association records when consent to receive notice by Electronic Transmission is revoked. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving Electronic Transmission of notices.
- (h) All current insurance policies of the Association and of all condominiums operated by the Association;
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- (j) Bills of sale or transfer for all property owned by the Association;
- (k) Accounting records for the Association and the accounting records for the Condominium, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not be limited to:
 - i Accurate, itemized, and detailed records for all receipts and expenditures.
 - ii A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
 - iii All audits, reviews, accounting statements, and financial reports of the Association or Condominium.

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

The official records of the Association shall be maintained within the State. The records of the Association shall be made available to a Unit Owner within five (5) working days after receipt of written request by the Board of Directors or its designee. This paragraph may be complied with by having a copy of the official records of the Association available for inspection or copying on the Condominium Property or Association Property.

The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, which shall be paid by the Association member. The Association may adopt reasonable rules regarding the time, location, notice and manner of record inspections and copying. The failure of an Association to provide official records to a Unit Owner or his authorized representative within ten (10) working days after receipt of a written request therefor shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. A Unit Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after the Association's receipt of the written request. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, Articles, By-Laws and rules, and all amendments to the foregoing, as well as the Question and Answer Sheet, to ensure their availability to Unit Owners and prospective purchasers. The Association may charge the actual costs incurred in preparing and furnishing these documents to those persons requesting same. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to Unit Owners:

- (a) A record which was prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial

administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

- (b) Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a Unit.
- (c) Medical records of Unit Owners.

Notwithstanding anything herein to the contrary, the Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by applicable law to be made available or disclosed. The Association or its authorized agent shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder or current Unit Owner for its time in providing good faith responses to requests for information on behalf of a prospective purchaser or lienholder, other than that required by applicable law, provided that such fee shall not exceed \$150, plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's response.

- 18. Arbitration. Prior to the institution of court litigation, a party to a Dispute shall petition the Bureau for nonbinding arbitration, in the manner provided in Section 19.1 of the Declaration of Condominium, which is incorporated by reference herein.
- 19. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Units with the applicable condominium fire and life safety code.
- 20. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
- 21. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.
- 22. Multiple Condominiums. It is acknowledged that in accordance that pursuant to the Declaration, the Association may not operate more than one condominium.
- 23. Conflict. Notwithstanding anything in the Declaration to the contrary, in the event any of the provisions of these By-Laws conflict with the provisions of the Condominium Act as it may be amended from time to time, the provisions of the Act shall control.

SCHEDULE "A"
TO
BY-LAWS
RULES AND REGULATIONS
FOR
BEAU RIVAGE, A CONDOMINIUM

1. Occupancy and Use Restrictions. Units may be used only as residences and for no other purpose. No business, profession or trade of any type shall be conducted on any portion of the Condominium Property. This prohibition shall not be applicable to the Developer with respect to its development of the Condominium Property, its construction, repair, decorating, administration, sale, rental or lease of Units, or its use of Units as models, V.I.P. or guest suites, or for sales offices or management services. Nothing herein shall be construed to prohibit ownership of a Unit by a corporation, domestic or foreign, provided that the residential nature of the Condominium is not disturbed.

Unless otherwise determined by the Board of Directors, and except as otherwise provided in Rule 2, a person(s) occupying a Unit for more than one (1) month without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Section (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Declaration and the Board of Directors shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

2. Leases. Leasing of the Units shall be subject to the prior written approval of the Association. Every lease of a Unit may require, in the sole discretion of the Association, a deposit from the prospective tenant in an amount not to exceed one (1) month's rent ("Deposit"), to be held in an escrow account maintained by the Association, provided, however, that the Deposit shall not be required for any Unit which is rented or leased directly by or to the Developer. No lease shall be for a term of less than one (1) month and a Unit Owner may not lease its Unit more than twelve times in any calendar year period, regardless of the lease term. The foregoing requirement shall not apply to a Unit rented or leased directly by or to the Developer. Every lease shall provide (or, if it does not, shall be automatically deemed to provide) that: (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease); (ii) and that a tenant may not, under any circumstances, sublet the Unit (or any portion thereof) to any other person or permit occupancy by any other person. Additionally, copies of all written leases shall be submitted to the Association and tenants must register with the Association prior to moving in. The Unit

Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements from the acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and a special charge may be levied against the Unit therefore.

All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease.

3. Children. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them with these Rules and Regulations and any other rules and regulations of the Association. Playing shall not be permitted in any of the hallways, stairways, elevators, lobby areas, parking garages or roadways. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing the recreational facilities.

4. Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Condominium Property. There may not be more than two (2) household pets, of up to 25 pounds each, maintained within any Unit and the Limited Common Elements appurtenant thereto, to be limited to dogs or cats (or other household pet, as defined and specifically permitted by the Association), which shall not be kept, bred or maintained for any commercial purpose and shall not become a nuisance or annoyance to neighbors. Notwithstanding the foregoing, a Unit Owner may, subject to all other applicable restrictions, rules and regulations, keep in the Unit, and the Limited Common Elements appurtenant thereto, an otherwise permitted pet which exceeds 25 pounds if an exemption was granted by the Developer for such pet(s). Those pets which, in the sole discretion of the Association endanger health, have the propensity for dangerous or vicious behavior (such as pit bulldogs or other breeds or mixed breeds which have the propensity for dangerous or vicious behavior), make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any other portion of the Condominium Property shall be removed upon request of the Board. Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times, or carried, when outside the Unit. No pet may be kept on a balcony, terrace or patio when its owner is not in the Unit. Any violation of the provisions of this Rule shall entitle the Association to exercise all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in these Rules and Regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Rule shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that it does not become a nuisance or annoyance to neighbors.

5. Use of Common Elements and Association Property. The Common Elements and other Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units. The entranceways, passages, vestibules, elevators,

RULES AND REGULATIONS

-2-

lobbies, halls and similar portions of the Common Elements shall be used only for ingress and egress to and from the Condominium Property. No carts, bicycles, carriages, chairs, tables or other similar objects shall be stored in them. Each Unit Owner's personal property must be stored within his Unit or within the storage lockers, if any, assigned to his Unit. The Common Elements shall not be obstructed, littered, defaced, or misused in any manner. Food and beverages may not be consumed on the Common Elements, except as specifically permitted by the Board of Directors. In no event shall any Unit Owner or occupant place, or permit the placement of, any item which obstructs, or otherwise impedes access to, any portions of the Condominium Property which are either designated or used as delivery and receiving areas.

6. Nuisances. No portion of the Units, Limited Common Elements or Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No noxious or offensive activity shall be carried on in any Units, Common Elements, Limited Common Elements or other portions of the Condominium Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board of Directors shall have the right to determine if any equipment, fixture, improvement, materials or activity producing such noise or odor constitutes a nuisance. In particular, during the hours from 11:00 p.m. through 8:00 a.m. no Unit Owner shall play (or permit to be played in its Unit or on the Limited Common Elements or Common Elements) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. Additionally, there shall not be maintained any plants, animals, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Condominium Property. No activity specifically permitted by this Rule shall be deemed a nuisance.

7. Outside Items. No rubbish, garbage, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Condominium Property, except within designated trash receptacles. No linens, clothing, household fabrics, curtains, rugs, or laundry of any kind shall be hung, dried or aired from any windows, doors, balconies, terraces or other portions of the Condominium Property. No equipment, materials or other items shall be placed on balconies, patios or similar areas. The foregoing shall not prevent placing and using patio-type furniture, planters and other items in such areas if the same are normally and customarily used for a residential balcony or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board of Directors shall be final and dispositive.

8. Firearms. The discharge of firearms and fireworks within the Condominium is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

9. No Improper Uses. No improper, offensive, hazardous 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 thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of the Declaration, the Articles of Incorporation or the By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Rule. No activity specifically permitted by the Declaration shall be deemed to be a violation of this Rule.

10. Alterations. No Unit Owner shall cause or allow improvements or changes to his Unit or to any Limited Common Elements, Common Elements, or Association Property, which alters the exterior appearance thereof, or which could in any way affect the structural, electrical, plumbing or mechanical systems of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 of the Declaration). No spas, hot tubs, whirlpools or similar improvements shall be permitted on any patio or balcony. See Section 17.10 of the Declaration for details.

11. Sound, Weight and Flooring Restrictions. The installation of hard and/or heavy surface floor coverings such as tile, marble, wood, and the like, other than in bathrooms of Units, must be approved by the Board of Directors and must achieve a minimum overall Impact Isolation Class rating of 48 in combination with the structural floor slab. Additionally, the installation of any improvement or heavy object must be approved by the Board of Directors and must be compatible with the overall structural design of the Building. In no event shall any heavy object, which would exceed a life load limit of 50 pounds per square foot, be placed in any Unit. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Additionally, the Board may require Unit Owners to furnish it with certifications of the floor assembly Impact Isolation Class rating from the installers of such surfaces. The color and exact materials to be used on balcony floor coverings shall also be approved by the Board. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements.

12. Exterior Improvements and Landscaping. No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior

walls, doors, balconies or windows of the Units or the Limited Common Elements appurtenant thereto (including, but not limited to, awnings, canopies, shutters, signs, screens, window tinting, fixtures and equipment), without the prior written consent of the Association. No painting or changes in the exterior colors of any Units or Limited Common Elements appurtenant thereto shall be permitted.

13. Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE", "FOR RENT", security service or construction signs shall be displayed to the public view on any portion of the Unit, Limited Common Elements or Common Elements, without the prior written consent of the Association, except (a) signs, regardless of size, used by the Developer, its successors or assigns or a party developing or marketing any portion of the properties subject to this Declaration, including signs used for construction or repairs, advertising, marketing, sales or leasing activities, (b) signs installed as part of the initial construction of the Units or other Improvements and replacements of such signs (similar or otherwise) and (c) bulletin boards, entrance, directional, informational and similar signs used by the Association.

14. Lighting. All exterior lights and exterior electrical outlets must be approved in accordance with Section 9 of the Declaration.

15. Exterior Sculpture and Similar Items. Exterior sculpture, flags, and similar items must be approved in accordance with Section 9 of the Declaration. Notwithstanding the foregoing, any Unit Owner may respectfully display one (1) portable, removable American flag, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, any Unit Owner may respectfully display portable, removable official flags, not larger than four and one-half feet by six feet (4'6" x 6') that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

16. Air Conditioning Units. No window or wall mounted air conditioning units may be installed in any Unit.

17. Outside Installations. No radio station or shortwave operations of any kind shall operate from any Unit, Limited Common Elements or Common Elements. Except to the extent permitted by applicable laws, no exterior satellite dish, or other transmitting or receiving apparatus, radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Common Elements, Limited Common Elements, or Units, without the prior written consent of the Association. Notwithstanding the foregoing, upon obtaining the prior written consent of the Association, satellite dishes, and other devices permitted under Section 207 of the Telecommunications Act of 1996, may be installed within the Units or within any Limited Common Elements appurtenant thereto, provided, however, that in no event shall any such device be installed in or on any other portion of the Condominium Property. To the extent permissible under applicable law, the Association may enact Rules and Regulations, requiring that any such devices which may be permitted under applicable law are comparable in size, weight and appearance, are installed and maintained in a manner

designed to protect the safety of the Building and its occupants and satisfy any standards established by the Association for architectural appearance.

18. Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left in the hallways or other Common Elements of the Condominium or in the Limited Common Elements (including balconies, terraces and patios).

19. Window and Door Treatments. No reflective film tinting or window coverings shall be installed on any windows or glass doors except as necessary to replace or restore tinting of glass surfaces as originally installed, unless approved by the Association in accordance with Section 9.1 of the Declaration. Curtains, drapes and other window coverings (including their linings) which face on exterior windows or glass doors of Units, or are visible from the exterior of the Building, shall be white or off-white in color, unless otherwise specifically approved by the Board of Directors. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit, except for any substance previously approved by the Board of Directors for energy conservation or hurricane protection purposes. No unsightly materials may be placed on any window or glass door or shall be visible through such window or glass door. Any screen door must be of a uniform type approved by the Association.

20. Hurricane Protection. No type of hurricane protection may be installed in or around the Units or the Limited Common Elements appurtenant thereto, other than hurricane shutters or other hurricane protection approved by the Association, which shall be installed or affixed in a manner approved by the Association. Upon issuance of an official hurricane warning, each Unit Owner shall take all actions necessary to prepare his/her Unit for any such hurricane, which shall include (i) removing all objects from balconies and terraces which will not be secured or otherwise protected, and (ii) complying with all rules and regulations which may have been adopted by the Association from time to time. No hurricane or storm shutters or other hurricane protection shall be permanently installed on any structure in a Unit or in the Limited Common Elements or Common Elements, unless first approved in accordance with Section 9.1 of the Declaration.

21. Unit Maintenance. Each Unit Owner must undertake or must designate a responsible firm or individual to undertake his general maintenance responsibilities, which shall include, at a minimum, maintaining the exterior appearance of the Unit and the Limited Common Elements, safeguarding the Unit and the Limited Common Elements, to prepare for hurricane or tropical storm watches and warnings by, among other things, removing any unfixed items on balconies and terraces, and repairing the Unit in the event of any damage therefrom. An Owner may designate a firm or individual to perform such functions for the Owner, but such designation shall not relieve the Owner of any responsibility hereunder. The name(s) and addresses of such firm or individual must be furnished to the Association. The designation of such firm or individual shall be subject to the approval of the Association.

22. Hazardous Substances. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit, Limited Common Elements or Common Elements, except such as are generally used for normal household purposes. No electric, gas, charcoal barbecue or other cooking devices, or outside cooking, is permitted on any patio or balcony.

23. Parking and Prohibited Vehicles. No person shall park any vehicle so as to obstruct or otherwise impede ingress or egress to any parking spaces, including, without limitation, to a parking space assigned to any other Unit. Parking in the Condominium shall be restricted to private automobiles and passenger-type vans, jeeps, pick-up trucks not exceeding one-half ton, motorcycles, motor scooters, small trailer and jet ski trailers (all of which are collectively referred to herein as "vehicles"). The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted on the Condominium Property which leaks oil, brake fluid, transmission fluid or other fluids. No Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portions of the Condominium Property. No more than one (1) motorcycle or motor scooter may be parked in a single space, and in no event may a motorcycle or a motor scooter be parked in the same parking space as another vehicle or between any parking spaces.. For so long as the Developer conducts any sales or leasing activities on the Condominium Property, its use of parking spaces shall not be impeded or restricted. The prohibitions on parking contained in this section shall not apply to (a) temporary parking of commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, sales or marketing purposes, (c) service vehicles operated in connection with the Association, , or its management company. Subject to applicable laws and ordinances, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

24. Insurance Rates. Nothing shall be done or kept in the Common Elements, Limited Common Elements or Units which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Units, or on the Limited Common Elements or Common Elements, which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

25. Door Locks and Access to Units. In order to facilitate access to the Units by the Association for the purposes enumerated in Section 11.1 of the

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Declaration, it shall be the responsibility of all Unit Owners to deliver a set of keys to their Unit to the Association to use in the performance of its functions. No Owner shall change the locks to the service entry door to its Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.

26. Employees of Unit Owners. Domestic employees of Unit Owners are required to enter the Building only through entranceways designated by the Association, may not use the recreational amenities and may not use Building personnel, except as is necessary or required in connection with their employment.

27. Use of Employees. Employees of the Association are not to be engaged by Unit Owners during such employees' normal working hours, for personal errands which are not within the scope of the applicable employee's duties. The Board of Directors, through a management company engaged by the Association, if any, shall be solely responsible for directing and supervising the Association's employees.

28. Documents. All Owners shall be obligated to deliver the documents received from the Developer, or from any prior Owner, containing the Declaration of Condominium and any other documents, and any amendments thereto, to any purchaser or grantee of their Unit.

29. Guest Suite. The Guest Suite located within the Common Elements may be reserved and used by Unit Owners subject to such rules and regulations as the Association shall enact, from time to time, including, without limitation, rules governing the manner and frequency within which a Unit Owner may reserve the use thereof. The Association shall also establish, from time to time, daily reservation fees and deposits to reimburse the Association for the cost of utilities and wear and tear to the Guest Suite.

30. Tennis Court. The rooftop of the Parking Garage shall contain the Tennis Court. Any no time whatsoever shall more than twenty (20) individuals be permitted, for any reason, to congregate on the rooftop of the Parking Garage.

31. Mold Prevention. No Unit Owner shall install within his or her Unit, or upon the Common Elements and/or the Condominium Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture and/or shelving within a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Further, all Unit Owners, whether or not occupying the Unit, shall continuously run the air conditioning system to minimize humidity in the Unit. While the foregoing is intended to minimize the potential development of molds, mildew, spores, fungi and/or other microtoxins, the Developer does not make any representations or warranties regarding the existence or development of molds or microtoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of molds, mildew, spores, fungi and/or other microtoxins.

32. Liability for Damage. Unit owners are liable for any damage caused by them, their family members, tenants or guests to the Common Elements.

33. Liability for Repairs. A Unit Owner shall be jointly and severally liable with his tenant for any amount which is required to affect repairs or replacements to the Common Elements caused by the tenant. All leases of Units shall be automatically deemed to include a covenant on the part of the tenant to comply with, and be fully bound by, the provisions of the Declaration and these Rules and Regulations. This Rule shall also apply to subleases of Units and assignments of leases.

a. Rules and Regulations. Every Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Unit Owner or tenant of not less than 14 days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, By-Laws or Rules and Regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Unit Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. The hearing must be held before a committee of other Unit Owners. At the hearing, the Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Committee so determines, it may impose such fine as it deems appropriate by written notice to the Unit Owner or tenant. If the Committee does not agree with the fine, the fine may not be levied.

b. Fines: The amount of any fine shall be determined by the Association and shall not exceed the maximum amount allowable under applicable law, as amended from time to time.

c. Violation: Notwithstanding paragraph (b) above, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate the maximum amount allowable under applicable law, as amended from time to time.

d. Payment of Fines: Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested, within ten (10) days after written notice of the Committee's decision at the hearing.

e. Application of Fines: All monies received from fines shall be allocated as directed by the Board of Directors.

f. Non-exclusive Remedy: These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages

which the Association may otherwise be entitled to recover by law from such Owner or occupant.

34. Effect on Developer. These rules and regulations shall not apply to the Developer, nor its agents or employees and contractors, nor to the Units owned by the Developer except that the Developer shall be subject to the requirement that the prior written approval of the Condominium Association be obtained for leases of Units set forth in Rule 2 and to the pet restrictions set forth in Rule 4. The Developer shall also be subject to any restrictions on the type of vehicles allowed to park on the Condominium Property set forth in Rule 23; however, the Developer and its designees shall be exempt from any such restrictions if the vehicle is engaged in any activity relating to construction, maintenance or marketing of Units. All of these rules and regulations shall apply, however, to all other Owners and occupants even if not specifically so stated in portions hereof. In enforcing its rights hereunder, the Developer shall also be entitled to bring an action and recover sums due for damages, injunctive relief, or any combination thereof, and the Developer shall be entitled to recover all legal fees and expenses incurred in connection with any such action.