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**Mariners Palm Harbor Condominium
DECLARATION OF CONDOMINIUM**

Mariners Palm Harbor, LLC, a Florida limited liability company (hereinafter called the "Developer") does hereby declare:

1. **General Description.** Mariners Palm Harbor Condominium, is located on Marco Island, Florida, and consists of one (1) building, containing seven (7) residential Condominium Units and appurtenances as described in this Declaration of Condominium.

2. **Introduction and Submission.**

2.1 **The Land.** The Developer owns the fee simple title to certain land (the "Land") located in Collier County, Florida, more particularly described as:

Lot 16, Marco Beach Unit Ten according to the Plat thereof as recorded in Plat Book 6, Pages 74 through 79, Public Records of Collier County, Florida

The Developer acquired title to the Land by Warranty Deed, as recorded in the Public Records of Collier County, Florida, in Official Records Book 4138, at Page 4147.

2.2 **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected upon it, all rights and appurtenances belonging thereto, and all other property, real, personal or mixed, now or hereafter situated on the Land, but excluding all public and private utility installations owned by entities furnishing services to the Condominium, to the condominium form of ownership for use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Without limiting any of the foregoing, no property, real, personal or mixed, not located upon the Land shall be deemed part of the Condominium, nor shall it be subject to the jurisdiction of the Association, the operation and effect of the Condominium Act, or any rules or regulations promulgated thereunder, except as described herein.

2.3 **Name.** The name by which this Condominium is to be identified is Mariners Palm Harbor Condominium. The address of the Condominium is 908 Panama Court, Marco Island, Florida, 34145.

3. **Definitions.** The following terms when used in this Declaration, the attached Exhibits, and any Rules and Regulations promulgated under such documents, shall have the meanings ascribed to them in this Section 3, except where the context clearly indicates a different meaning:

3.1 **"Act"** means the Condominium Act (Chapter 718, Florida Statutes) as it exists on the date hereof.

3.2 **"Articles"** or **"Articles of Incorporation"** means the Articles of Incorporation of the Association, as they may be amended from time to time.

- 3.3 **"Assessment"** means a share of the funds required for the payment of Common Expenses, and which from time to time is assessed against the Unit Owner.
- 3.4 **"Association"** or **"Condominium Association"** means Mariners Palm Harbor Condominium Association, Inc., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 3.5 **"Association Property"** means the property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 3.6 **"Board"** or **"Board of Directors"** means the representative body which is responsible for administration of the Association. This is the same representative body referred to as the **"Board of Administration"** by the Act.
- 3.7 **"Building"** means collectively all structures situated on the Condominium Property in which the Units are located.
- 3.8 **"Bylaws"** means the Bylaws of the Association, as they may be amended from time to time.
- 3.9 **"City"** means Marco Island, Florida
- 3.10 **"Common Elements"** means and includes those portions of the Condominium Property which are not within the Units, including, without limitation, the following items:
- (a) Easements through the Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, and for equipment and fixtures used to furnish utility services, heating, cooling, ventilation or other services to more than one Unit or to the Common Elements, together with related property and installations;
 - (b) An easement of support in every portion of a Unit which contributes to the support of the Building, other Units, or any part of the Common Elements;
 - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;
 - (d) Any other fixtures or portions of the Condominium Property held for the common use, benefit, and enjoyment of more than one Unit Owner or designated as Common Elements in this Declaration or the Act.
- 3.11 **"Common Expenses"** mean all expenses incurred by the Association for the Condominium and charges assessed against Units in the Condominium by the Association as set forth in this Declaration and the Act.
- 3.12 **"Common Surplus"** means the excess of all receipts of the Association collected on behalf

of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.

3.13 **"Condominium Parcel"** means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.

3.14 **"Condominium Property"** means the land, improvements, and other personal property, if any, described in Section 2.1 of this Declaration, subject to the limitations and exclusions of that Section.

3.15 **"County"** means Collier County, Florida.

3.16 **"Declaration"** or **"Declaration of Condominium"** means this instrument, as it may be amended from time to time.

3.17 **"Developer"** means Mariners Palm Harbor, LLC, a Florida limited liability company, its successors, and such of its assigns as to which the rights of the Developer under this Declaration are specifically assigned. The Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed to be the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

3.18 **"Exhibits"** means and includes those documents recorded with this Declaration, including, without limitation, the Legal Description of the Land, the Survey and Plot Plan, the Floor Plans, the Articles of Incorporation, and the Bylaws.

3.19 **"Improvements"** means all structures and artificial changes to the natural environment located on the Condominium Property, including, without limitation, the Building.

3.20 **"Institutional First Mortgagee"** means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, mortgage banker, an agency of the United States Government, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), any other lender generally recognized as an institutional lender, or the Developer, any of which hold a first mortgage on a Unit or Units or any of the above and any and all investors, or the successors and assigns of such investors which have loaned money to the Developer to acquire, or to construct improvements upon the Land and who have a mortgage lien on the Property securing such a loan. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units by which greater than one-half (1/2) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.

3.21 **"Limited Common Elements"** means those Common Elements the use of which is reserved

to a certain Unit to the exclusion of all other Units, as specified in this Declaration. References herein to the Common Elements shall also include all Limited Common Elements, unless the context would prohibit or it is otherwise expressly provided.

3.22 **"Primary Institutional First Mortgagee"** means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owned by any other Institutional First Mortgagee.

3.23 **"Rules & Regulations"** means the Rules & Regulations of the Association, as they may exist from time to time.

3.24 **"Surface Water Management System Facilities"** means the surface water management facilities to including but not be limited to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plan compensation area, wetlands and assorted buffer areas and wetland mitigation areas.

3.25 **"Unit"** means a part of the Condominium Property which is subject to exclusive ownership and intended for residential uses.

3.26 **"Unit Owner," "Owner of a Unit," or "Owner"** means the Owner of a Condominium Parcel intended for residential uses.

3.27 **"Utility Service"** means and includes, without limitation, electric power, natural gas, hot and cold water, telephone, cable television, garbage and sewage disposal, as well as heating, air conditioning, and ventilation systems.

4. **Description of Condominium.**

4.1 **Survey and Architectural Exhibits.** The attached Survey and Architectural Exhibits are incorporated by reference in this Declaration, and include the following: plot plan, survey and floor plans.

[See attached Exhibit "A" "Survey and Architectural Exhibits."]

At the date of recording of this Declaration, Exhibit "A" is in sufficient detail to identify the location, dimensions, and size of each Unit and the location, dimensions and size of the Common Elements and Limited Common Elements. Accordingly, the condominium as represented in the Survey and Architectural Exhibits has been certified by a Florida Registered Land Surveyor indicating statutory compliance with Section 718.104(4)(e), Florida Statutes.

4.2 **Identification of Units.** The Condominium Property consists of the Land together with the buildings and other improvements, which includes the seven (7) Units, the Common Elements, and the Limited Common Elements. Exhibit "A" to this Declaration sets forth the building floor plans for the different types of Units and identifies each Unit by a unique numerical designation. There

shall pass with each Unit as appurtenances to the Unit:

- (a) an undivided share in the Common Elements and Common Surplus;
- (b) the exclusive right to use such Limited Common Elements as provided in this Declaration;
- (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; and
- (d) full voting rights and membership in the Association.

4.3 **Future Phases.** No future phases are to be added to the Condominium.

4.4 **Unit Boundaries.** Each Unit shall include that part of the Building containing the Unit 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 Boundary.** The horizontal plane of the undecorated finished ceiling. In a unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the Unit, the ceiling shall include the vertical or diagonal surface connecting the raised ceiling with the ceiling of the remaining portion of the unit, and the upper boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the ceiling.

(ii) **Lower Boundary.** The horizontal plane of the undecorated finished floor. In a Unit containing a room in which the floor is raised above the level of the floor in the rest of the Unit, the floor shall include the vertical or diagonal surface connecting the raised floor with the floor of the remaining portion of the Unit, and the lower boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the floor.

(iii) **Interior Divisions.** Except as provided in subparagraphs (i) and (ii) above, no part of the floor of the upper floor(s), ceiling of the lower floor(s), stairwell adjoining floors or nonstructural interior walls shall be considered a boundary of the Unit.

(b) **Perimetrical Boundaries.** The perimetrical boundaries of the Unit shall be the

vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

(c) **Apertures.** Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows, window screens, and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces such as windows and doors made of glass or other transparent material, and all framing and casings therefor, shall be included in the boundaries of the Unit.

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

(e) **Exceptions and Conflicts.** In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit as described or shown in Exhibit "A," 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 erroneous dimensions contained in Exhibit "A." In the event it appears that any dimension as shown on Exhibit "A" is erroneous, the Developer or the President of the Association shall have the right to unilaterally amend the Declaration to correct such survey. Any such amendment shall not require the joinder of any Unit Owner or Institutional First 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 "A" shall control in determining the boundaries of a Unit.

4.5 **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) **Terraces.** All terraces and balconies, improvements to the terraces and balconies, and walls facing the terraces and balconies, as to which direct and exclusive access shall be afforded to a particular Unit shall be Limited Common Elements appurtenant to such Unit. The Association shall have the right of access to the terraces, the exterior walls facing the terraces, railings, and related improvements, and shall be responsible for their maintenance, repair, and replacement. The Unit Owner shall be responsible for the maintenance and repair of any surface coatings and/or materials which the Owner shall apply, and the Owner may only apply surface coatings and/or materials with the prior written consent of the Association.

(b) **Miscellaneous Equipment Areas.** Any equipment or fixtures, including heating, ventilation, and air-conditioning systems, which are for the exclusive use of a particular Unit, shall be Limited Common Elements appurtenant to such Unit. Such equipment and fixtures shall be maintained, repaired, and replaced by the Owner of the particular Unit.

(c) **Parking Spaces.** Each Unit shall have two (2) assigned parking spaces, as shown in Exhibit "A." The assigned parking spaces shall be assigned to the Unit Owner at the time of the conveyance of the Unit to the Owner by means of a Parking Space Assignment Certificate, executed with the formalities of a Deed and suitable for recording. The Developer reserves the right to assign additional parking spaces, covered or uncovered, to Unit Owners in consideration of an additional fee to be determined by the Developer. All parking spaces assigned to a Unit shall be Limited Common Elements appurtenant to the particular Unit. All unassigned parking spaces shall be Common Elements. All parking spaces shall be maintained, repaired, and replaced by the Association.

(d) **Boat Slips.** The Developer may assign boat slips to individual units in consideration of an additional fee. All boat slips assigned to a Unit shall be Limited Common Elements appurtenant to the particular Unit. All unassigned boat slips shall be Common Elements. All boat slips shall be maintained, repaired, and replaced by the Association.

(e) **Freely Assignable.** The individual parking spaces and boat slips shall be freely assignable, from one Unit Owner to another, provided that a unit must retain at least one assigned parking space at all times and neither the Developer nor a Unit Owner may assign a parking space to any person who is not a Unit Owner, neither the Developer nor a Unit Owner may assign a boat slip to a person who is not a Unit Owner. When a Unit Owner conveys his Unit in a future transaction, the exclusive right to use any and all parking spaces and boat slip assigned to that Unit, unless previously re-assigned, shall be automatically transferred to the new Unit Owner.

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

(a) **Support.** Each Unit 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 and the Common Elements.

(b) **Utility and Other Services; Drainage.** Easements are reserved under, through, and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, drainage and water management to serve the Condominium. Unit Owners shall do nothing within or outside their Units that may interfere with or impair the provision of such utility, cable television, communications and security systems, drainage or water management facilities, or the use of related easements. The Association or its designee shall have a right of access to each Unit during reasonable hours to maintain, repair, or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and security systems, drainage facilities, and

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. Provided, however, that such right of access, except as necessary to prevent damage to the common elements or other Units, shall not unreasonably interfere with the Unit Owner's permitted use of the Owner's Unit.

(c) **Encroachments.** If any portion of the Common Elements encroaches upon any Unit; or any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or any encroachment shall hereafter occur as a result of (i) construction of the improvements; (ii) settling or shifting of the improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate; or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the improvements shall stand.

(d) **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be designated for such use; and for vehicular and pedestrian traffic over, through, and across such portions of the Common Elements as from time to time may be paved for such purposes. None of the easements specified in this paragraph (d) 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.

(e) **Construction; Maintenance.** The Developer (including its contractors, successors, and assigns) shall have the right to enter the Condominium Property and take all actions necessary to complete the construction of any Units or other improvements located or to be located on the Condominium Property, and for purposes of repair, maintenance, and replacement where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required to do so. Notwithstanding the foregoing, this easement shall at all times be subject to the provisions of Section 718.111(5), Florida Statutes.

(f) **Sales Activity.** For as long as the Developer retains at least one unsold Unit, the Developer (including its agents, successors, and assigns) shall have the right to use any such Unit and parts of the Common Elements to show as a model Unit, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.

(g) **Additional Easements.** The Developer (as long as it retains at least one unsold Unit) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby

appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific easements for the purpose of supplying electricity, natural gas, cable television, security systems, communications or other utility services, to issue appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto, or to relocate any such existing easements, drainage facilities, or water management 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 improvements, 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 relocation of existing easements will not prevent or unreasonably interfere with the reasonable residential use of the Units.

5. **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom, except Limited Common Elements as assigned from one Unit Owner to another Unit Owner with the approval of the Association, 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 Units shall remain undivided, and no action for partition of the Common Elements or the Condominium Property shall lie, except as provided herein with respect to termination of the Condominium.

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

6.1 **Fractional Ownership and Shares.** The ownership of each Unit shall include an undivided fractional interest in the land and other Common Elements as defined in Section 718.108, Florida Statutes, and an undivided fractional share of the Common Surplus, and an undivided fractional share of the Common Expenses, all of which shall be based on the same fraction. Each Unit in the Condominium shall be attributed one-seventh (1/7th) fractional interest and share. If for any reason the number of Units is increased or decreased, each Unit's fractional interest and share shall be a fraction, the numerator of which shall be the number one, and the denominator of which shall be the number one, and the denominator of which shall be the number of Units then existing.

6.2 **Voting.** Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Articles and Bylaws. Each Unit Owner shall be a member of the Association.

7. **Amendments.** Except as elsewhere provided herein, amendments to this Declaration, the Articles, the Bylaws, and the other attached Exhibits, may be made as follows:

7.1 **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 a majority of the Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by an affirmative vote of two-thirds (2/3) of the Board of Directors and two-thirds (2/3) of the Unit Owners in the Condominium present and voting at a duly called meeting of the Association.

7.2 By the Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors, may amend this Declaration, the Articles, the Bylaws, or any of the other attached Exhibits, to correct an omission or error, or to make any other amendment. The Developer may not unilaterally amend any of the foregoing documents, however, if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners join in such amendment, and Section 7.4 below is satisfied. The Developer reserves the right to amend this Declaration for any of the following purposes:

- (a) To accurately depict all of the Units, Common Elements, Limited Common Elements, or other improvements existing on the Condominium Property;
- (b) To comply with the requirements of any statute, rule, or regulation of the federal, state, or local government, any governmental or quasi-governmental agency, or any government-related corporation; including, without limitation, the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the provisions of the Fair Housing Act of 1968 and its subsequent amendments as codified at 42 U.S.C. § 3601 *et seq.*;
- (c) To amend this Declaration to correct any typographical or scrivener's errors pursuant to Section 718.110(5), Florida Statutes;
- (d) To conform to the requirements of any institutional mortgagee or government agency willing to make, purchase, or insure mortgage loans secured by Units or any portion of the Condominium Property or Association Property; or
- (e) For the purposes set forth in and pursuant to the provisions of Section 718.104(4)(e), Florida Statutes;
- (f) For the purposes set forth in and pursuant to Subsections 10.2 and 10.3 of this Declaration.

7.3 Execution and Recording. An amendment, other than an amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment to this Declaration, the Articles, the Bylaws, or other attached Exhibits, is effective when such certificate

is properly recorded in the Public Records of Collier County.

7.4 Proviso. Unless otherwise provided in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter the appurtenances to any Unit, or change the proportion by which the Unit Owner shares the Common Expenses and owns the Common Elements and Common Surplus, unless the Owner, and all record holders of liens encumbering the Unit, join in the execution of such amendment. No amendment may be adopted which would adversely affect any rights or priorities granted to or reserved by the Developer or mortgagees of Units, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association, without the consent of the Developer and the mortgagees in each instance; provided that no mortgagee may unreasonably withhold its consent. No amendment shall make any change in Sections 14 and 18 of this Declaration which materially affects the rights or interests of the Primary Institutional First Mortgagee, unless the Primary Institutional First Mortgagee shall join in the amendment. Such joinder shall not be unreasonably withheld. The provisions of this Section 7.4 may not be amended in any manner. Paragraphs 4.6(e), 4.6(f), and 4.6(g) of this Declaration may not be amended without Developer's joinder and consent so long as it holds any Unit for sale in the ordinary course of business.

No provision of this Declaration, the Articles, the Bylaws, or other written materials contained within the attached Exhibits, shall be amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration, the Articles, the Bylaws, and other attached Exhibits, shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See Section [insert Section number] for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment. In addition, two-thirds (2/3) or more of all Unit Owners must approve any amendment described in this paragraph, and the requirements of Subsection 7.1 of this Declaration must be satisfied before an amendment is valid.

8. Units. All maintenance, repairs, or replacement of 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 systems, appliances, carpet 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 Unit Owner at the Unit Owner's sole expense, except as otherwise provided herein.

8.1 Common Elements. Except to the extent (a) expressly provided to the contrary herein, or (b) proceeds of insurance are made available therefor, all maintenance, repairs, and replacements in or to the Common Elements and Limited Common Elements shall be performed by the Association and the cost thereof shall be charged to all Unit Owners as a Common Expense, except to the extent

arising from the negligence, misuse, or neglect of specific Unit Owners, in which case such expense shall be paid solely by such Unit Owners responsible. Any Unit Owner individually charged shall be entitled to a hearing held before a committee of other Unit Owners, to the extent required by and in accordance with Florida Statute Section 718.303(3), or any future successor statute, and as amended.

Pursuant to Section 718.116(9), Florida Statutes, the Developer shall be excused from payment of its share of the Common Expenses with respect to Units owned by it prior to the first of the following to occur: (i) such date the Developer turns over control of the Association to the Unit Owners, or (ii) all Units are sold, or (iii) six (6) months from the date of recording the Declaration, which period of six (6) months may be extended by the Developer for a maximum of five (5) additional six (6) months periods. During such period of time, the Developer hereby guarantees to Unit Owners other than itself that the Assessments for Common Expenses will not exceed the amounts set forth in the Prospectus or the budget if no Prospectus, filed by the Developer with the Division of Florida Condominiums, Timeshares and Mobile Homes. During such period as Developer's guarantee is in force, Developer will fund any deficits between collections by the Association from Unit Owners other than Developer, and the sum of actual Common Expenses for operating costs and the amount accrued by the Association to maintain reserves at the levels set forth in the budget (unless reserves are properly waived).

8.2 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment, fixtures, or other items of property which service a particular Unit or Limited Common Elements thereof shall be the responsibility of the particular Unit Owner, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, the Common Elements, or the Limited Common Elements. Where a Limited Common Element consists of a terrace, the Unit Owner who has the exclusive right to use the terrace shall be responsible for the maintenance, repair and replacement of all fixed or sliding glass doors or other portions of the entrance ways of the terrace, and the replacement of any light bulbs within the terrace area. The Unit Owner shall also be responsible for the maintenance and repair of any surface coatings and/or materials which the Unit Owner shall apply, and the Unit Owner may only apply surface coatings and/or materials with the prior written consent of the Association. Notwithstanding the foregoing, the Association may provide maintenance for the Limited Common Elements and shall have the right to charge for and collect such costs and charges incurred for said maintenance to each specific Unit for which the maintenance and repairs were performed, up to that portion of the costs and charges, including collection costs, allocable to each such Unit, and fine the Unit Owner after following the procedures and in accordance with Article 8.1 of the Bylaws.

9. Additions, Alterations, or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations, or improvements (as distinguished from maintenance, repairs, and replacements) costing in excess of twenty percent (20%) of the then current annual operating budget (exclusive of reserves) 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 Units represented at a meeting at which a quorum is attained. Any such additions, alterations, or improvements to the Common Elements, costing in the aggregate less than twenty percent (20%) of the then current annual

operating budget (exclusive of reserves) in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations, or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section 9, "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 made beyond that year.

10. Additions, Alterations, or Improvements by Unit Owner.

10.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration, or improvement in or to the Common Elements, the Unit, or any Limited Common Element, including, without limitation, the installation of awnings, hurricane shutters, hot tubs, trellises, surface coatings or to any exterior portion of the Condo 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 such an addition, alteration, or improvement in such Owner's Unit, or Limited Common Elements, 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. Notwithstanding the foregoing, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to specifications as to color, style, and other factors deemed relevant by the Board. 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. 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, to hold the Association, and all other Unit Owners harmless from and to indemnify them for any expenses arising therefrom, and shall be solely responsible for the maintenance, repair, and insurance thereof from and after the date of installation or construction thereof as may be required by the Association.

10.2 Additions, Alterations, or Improvements by Developer. The foregoing restrictions of Subsection 10.1 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 make alterations, additions, or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to, and upon any Unit owned by it and the Limited Common Elements appurtenant to such Unit (including, without limitation, the removal of walls, floors, ceilings, and other structural portions of the improvements).

10.3 Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 10.2 of this Declaration, the Developer shall comply with all laws, ordinances, and regulations of all governmental authorities having jurisdiction, in making additions, alterations, or improvements to Units or the Condominium Property.

11. Operation of the Condominium; Powers and Duties of the Association.

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles and Bylaws (respectively, attached Exhibits "B" and "C"), as such documents may be amended from time to time. In addition, the Association shall have 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 of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements therein, or of any portion of a Unit maintained by the Association pursuant to this Declaration, or at any time as necessary, for making emergency repairs therein to prevent damage to the Common Elements or other Units;
- (b) The power to make and collect Assessments and other charges against Unit Owners, and to maintain, repair, replace, and regulate the Common Elements;
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at all 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 to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals; collection of Assessments; preparation of records; enforcement of the Rules and Regulations; and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association. Provided, however, that the Association and its officers shall retain at all times the powers and duties granted in this Declaration, the Articles, the Bylaws, and the Condominium Act, including, without limitation, the making of Assessments and the execution of contracts on behalf of the Association;
- (e) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Condominium Property and property owned by the Association;
- (f) All of the powers which a corporation not-for-profit in the State of Florida may exercise.

11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain, repair, and replace 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, repair, and replacement caused by any latent condition of the Condominium Property. Furthermore, 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 done by or on behalf of any Unit Owner, regardless of whether or not the addition, alteration, or improvement may have been approved by the Association pursuant to Subsection 10.1 of this Declaration. Moreover, the Association shall not be liable to any Unit Owner, lessee, or any other person or entity for any property damage, personal injury, death, or other liability on the grounds that the Association did not

maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where such insurance is not required to be maintained by the Association pursuant to Section 718.111(11), Florida Statutes.

11.3 Restraint Upon Assignment of Shares in Assets. The undivided interest of a Unit Owner in the Common Elements and Common Surplus cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Unit.

12. Determination of Common Expenses and Fixing of Assessments. 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 of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws. 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, and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and, if requested in writing, to their respective mortgagees. The Common Expenses shall include the expenses of and reserve for (if required by law) the operation, maintenance, repair, and replacement of the Common Elements, cost of providing a bulk-rate cable television service, 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 attached Exhibits, the Rules and Regulations adopted pursuant to such documents, or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the Bylaws.

13. Collection of Assessments.

13.1 Liability for Assessments. 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 that person is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for the 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 the 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.

13.2 Default in Payment of Assessments. Assessments become due and the Unit Owner shall become liable for said Assessments on the date set by the Association for payment. Assessments not paid within five (5) days from the date when they are due shall bear interest at the lesser of eighteen percent (18%) or the highest lawful rate from the date due until paid. Additionally, there shall be a late charge of the greater of twenty-five dollars (\$25.00) or five percent (5%) of the Assessment due, for any Assessments not paid within five (5) days of the date due. Assessments paid on or before five (5) days after the date due shall not bear interest or be subject to a late charge. The Association shall have a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest, and for reasonable attorneys' fees and costs incurred by the Association incident

to the collection of the Assessment or enforcement of the lien. The Association, in its sole discretion, may pursue enforcement of the lien or any other available legal remedy to collect delinquent assessments. The lien for unpaid assessments is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of Collier County, stating the legal description of the Condo-minium Parcel, 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 have been fully paid or until it is barred by law. The claim of lien shall secure, whether or not expressly listed, all unpaid assessments, accrued interest, administrative late fees, and attorneys' fees and costs, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure of the lien. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed, may bring an action at law to recover a money judgment for the unpaid Assessments, and may pursue any other available legal remedy without waiving its claim of lien.

13.3 Application of Delinquent Assessment Payments. Any payment received by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any reasonable attorney' fees and costs incurred in collection, and then to the delinquent Assessment. The foregoing shall apply notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

13.4 Acceleration of Assessments. The Association may accelerate the Assessments of a Unit Owner delinquent in the Owner's payment of Common Expenses. Accelerated Assessments shall be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

13.5 Developer Reserve Liability. Notwithstanding anything in the Declaration to the contrary, prior to turnover of control of the Association to Unit Owners the Developer may vote to waive the reserves and contributions for capital improvements for the first two (2) years of operation of the Association.

13.6 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered on behalf of the Association until the Association or Board of Directors has complied with any applicable Florida Statutes, and provided any notices required by law.

13.7 Appointment of Receiver to Collect Rental Fees. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay reasonable rental fees for the Unit, and the Association shall be entitled to the appointment of a receiver to collect such rent.

13.8 Institutional First Mortgagee. If an Institutional First Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage pursuant to proceedings in which the Association has been properly named as a junior lienholder, or as a result of a deed given in lieu of foreclosure or in

satisfaction of debt, such Institutional First Mortgagee, its successors, and assigns, shall be liable for all assessments which come due while it is the Unit Owner, and it shall be jointly and severally liable with the previous Unit Owner for all unpaid assessments that came due up to the time of transfer of title. Pursuant to Section 718.116(1)(b), however, the liability of a first mortgagee (including its successors or assigns) who acquires title to a Unit by foreclosure or deed in lieu of foreclosure, for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

(a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title, and for which payment in full has not been received by the Association; or

(b) One percent (1%) of the original mortgage debt. The provisions of this paragraph (b) shall not apply unless the first mortgagee joined 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.

13.9 Installments. Regular Assessments shall be collected quarterly, in advance, by the Association.

13.10 Use of Common Elements. The Association shall not charge any fee against a Unit Owner for the use of the Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner. The Association shall have the right to permit a specific Unit Owner to use the pool and recreation facilities for private parties or receptions, upon payment to the Association of a fee and/or security deposit to be determined.

Each Unit Owner is liable for its proportionate share of the Common Expenses, the share being the numeral one over the denominator which consists of the number of Units actually submitted to Condominium hereunder, and shares in the Common Surplus, in the same proportion. Such right does not vest or create in any Unit owner the right to withdraw or receive distribution of his share of the Common Surplus, except as otherwise provided herein.

14. Insurance. Insurance covering the Condominium Property and the Association Property shall be obtained as required by the Act or in excess thereof at the discretion of the Board. Except as specifically provided in this Declaration or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage for all property lying within the boundaries of their Unit, for their personal liability, for their living expenses, or for any other risks not otherwise insured in accordance with this Section 14 or the Act. Insurance policy premiums paid by the Association shall be a Common Expense. Each Unit Owner shall maintain, at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Unit, for their personal liability arising from the use of their Unit, for areas of the Common Elements for which they have exclusive use, or for which they have an obligation to maintain, repair, or replace.

To adequately protect the Association and the Common Elements, insurance shall be carried and kept

in force at all times in accordance with the following provisions:

14.1 **Duty and Authority to Obtain**. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association or, in the discretion of the Board an insurance trustee, individually and as agent for the Association and for the Unit Owners without naming them, and their mortgagees.

14.2 **Description of Coverage**. Copies of insurance policies purchased by the Association shall be available for inspection by Unit Owners upon reasonable request during normal business hours.

14.3 **Insurance Proceeds**. All insurance policies purchased by the Association are for the benefit of the Association, the Unit Owners and their mortgagees as their interests may appear, and all proceeds are payable to the Association. The duty of the Association is to receive such proceeds as are paid and hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgagees in the following shares:

- a. **Common Elements**. Proceeds on account of damage to Common Elements shall be held in as many undivided shares as there are Units; the shares of each Unit Owner being the same as his share in the Common Elements.
- b. **Units**. Proceeds for damage to Units are held in the following undivided shares:
 - (1) **Partial Destruction, When the Buildings are to be Restored**. Insurance proceeds are held for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner less any deductible.
 - (2) **Total Destruction of the Buildings or When the Buildings are not to be Restored**. Insurance proceeds are held for the Owners of all Units in said buildings, each Owner's share being in proportion to his share in the Common Elements appurtenant to his Unit, relative to the Owners of all Units in said buildings.
 - (3) **Mortgagee**. If a mortgagee endorsement has been issued for a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Units except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

14.4 **Distribution of Proceeds**. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner.

- a. **Cost of Reconstruction or Repair**. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any

proceeds remaining after defraying costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

b. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

14.5 Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

15. RECONSTRUCTION OR REPAIR AFTER CASUALTY. If any part of the Condominium property is damaged by casualty, whether and how it is reconstructed or repaired is determined as follows:

15.1 Damage to Units Only, Not Common Elements. Where loss or damage occurs within a single Unit or Units, without damage to the Common Elements, the insurance proceeds, less the deductible, are distributed to the Owner(s) of the damaged Units, remittances to Unit Owners and their mortgagees being payable jointly to them. However, if the Association decides to repair the Unit or Units, the insurance proceeds shall be distributed to the Association and the Association must use said proceeds to repair the Unit or Units. Any excess proceeds after all repairs have been completed and paid for shall be distributed to the Owner(s) of the damaged Units, remittances to Unit Owners and their mortgagees being payable jointly to them.

15.2 Damage to Common Elements - Less than "Very Substantial". Where loss or damage occurs to the Common Elements, or to any Unit or Units and the Common Elements, but the loss is less than "very substantial", as hereafter defined, it is mandatory for the Association and the Unit Owners to repair, restore, and rebuild the damage caused by the loss, and the following procedures apply:

a. Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

b. Contract. The insurance proceeds shall be paid to the Association, and the Association shall promptly contract for the repair and restoration of the damage.

c. Insufficient Insurance. If the net proceeds of insurance are insufficient to pay for the cost of repair and reconstruction of the Common Elements, upon determination of the deficiency the Association shall promptly levy a special assessment against all Unit Owners in proportion to their shares in the Common Elements. Such special assessments need not be approved by the Unit Owners. The special assessments shall be delivered to the Association and added by the trustee to the proceeds available for repair and restoration of the property.

15.3 **"Very Substantial" Damage.** As used in this Declaration, the term, "very substantial" damage means loss or damage whereby three-fourths (3/4) or more of the total Units are rendered uninhabitable. Should such "very substantial" damage occur, then:

a. **Estimates.** The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof.

b. **Membership Decision.** A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty, to determine the decision of the membership with reference to rebuilding or abandonment of the condominium project, subject to the following:

(1) **Insurance Sufficient.** If the net insurance proceeds available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored or repaired unless the Owners of ninety percent (90%) of the Units vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of Units, in which case the condominium shall be terminated. If the Condominium is terminated, all insurance proceeds shall first be used to clear off all surface improvements from and restore to its natural state the surface of the land submitted to Condominium by this Declaration, and any excess funds remaining may then be distributed to the Unit Owners pursuant to the provisions of this Declaration.

(2) **Insurance Not Sufficient.** If the net insurance proceeds available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless three-fourths (3/4) of the Owners voted in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the Condominium is terminated, all insurance proceeds shall first be used to clear off all surface improvements from and restore to its natural state the surface of the land submitted to Condominium by this Declaration, and any excess funds remaining may then be distributed to the Unit Owners pursuant to the provisions of this Declaration. If three-fourths (3/4) of the Unit Owners vote in favor of the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate the contract for such repairs and restoration. The special assessment shall be delivered to the Association and added to the proceeds available for repair and restoration of the property.

c. **Dispute.** If any dispute arises as to whether "very substantial" damage has occurred, a determination by the Board of Directors is binding on all Unit Owners.

15.4 **Application of Construction Funds.** The first monies disbursed for repair and restoration are deemed to be from the insurance proceeds; if there is a balance in the funds after the payment of all costs of repair and restoration, such balance shall be distributed to the Unit Owners.

15.5 **Equitable Relief.** If the Condominium property is substantially damaged and is not repaired, reconstructed, or rebuilt within a reasonable period of time, any Unit Owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it is presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within eighteen (18) months thereafter.

15.6 **Plans and Specifications.** Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors of the Association and by the Owners of three-fourths (3/4) of the Units, together with the approval of any institutional mortgagee holding a first mortgage on a damaged Unit, which approval shall not be unreasonably withheld.

16. **CONDEMNATION.**

16.1 **Deposit of Awards with Association.** The taking of all or any part of the Condominium property by condemnation or eminent domain is deemed a casualty to the portion taken, and the awards for that taking are deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association. If any Unit Owner fails to deposit his award, a charge, not an assessment, shall be made against the defaulting Unit Owner in the amount of his award, or the amount of that award is set off against any sums 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 a casualty.

16.3 **Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced to the extent necessary, the Owners of condemned Units, if any, will be made whole to the extent possible with the condemnation proceeds, and if any condemnation proceeds remain, any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

16.4 **Association as Agent.** The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

16.5 **Units Reduced but Tenantable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made tenantable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes made in the

Condominium.

- a. Restoration of Unit. The Unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required are to be paid by the Owner of the Unit. This is not an assessment.
- b. Distribution of Surplus. The balance of the award, if any, is distributed to the Owner of the Unit(s) and to each mortgagee of the Unit(s), the remittance being made payable jointly to each respective Owner and mortgagee.

16.6 Unit Made Untenantable. If the taking is of any entire Unit or so reduces the size of a Unit that it cannot be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes made in the condominium.

- a. Payment of Award. The fair market value of the Unit immediately prior to the taking is paid to the Owner of the Unit and to each mortgagee of the Unit, to the extent of the condemnation proceeds, the remittance being made payable jointly to the Owner and the mortgagees.
- b. Addition to Common Elements. If possible and practical, the remaining portion of the Unit becomes a part of the Common Elements and is placed in condition for use by all Unit Owners in the manner approved by the Board of Directors.
- c. Adjustment of Shares in Common Elements. The shares in the Common Elements and common charges appurtenant to the Units that continue as part of the Condominium are adjusted to distribute the Ownership of the Common Elements among the reduced number of Unit Owners. This is done by restating the shares of continuing Unit Owners in the Common Elements and common charges as percentages of the total of the numbers representing the shares of these Owners as they are listed prior to the adjustment.
- d. Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required to condition the remaining portion of the Unit for use as a part of the Common Elements are raised by special assessment against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. The assessments are made in proportion to the shares of those Owners in the Common Elements after the changes made by the taking.
- e. Appraisal. If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within 30 days after notice by either party, the value shall then be determined by appraisal as follows. The Unit Owner, the first mortgagee, if any, and if it so elects the Association, shall each appoint one M.A.I. appraiser who is familiar with condominium values in Naples, Florida, who shall appraise the Unit and shall determine the fair market value by computing the arithmetic average of

their appraisals of the Unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisal shall be paid by the party selecting the appraiser.

16.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, is distributed to the Unit Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation. If a Unit is mortgaged, the remittance shall be paid jointly to the Owner and mortgagees of the Unit.

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

17.1 Occupancy. Each Unit shall be used as a single family residence only, except as otherwise expressly provided in this declaration. A Unit owned by an individual, corporation, partnership, trust, or other fiduciary may only be occupied by the following persons, (a) the Unit Owner; (b) the designee of such corporation or partnership, designated as the primary occupant of the Unit; (c) the fiduciary, or the beneficiary of such fiduciary designated as the primary occupant of the Unit; or (d) permitted occupants under an approved lease or sublease of the Unit (as described below). Family members of the Unit Owner or other designated occupant may also reside in the Unit, provided that the Unit Owner or other designated occupant must reside with them. Lessees under an approved Unit lease or sublease must be an individual lessee or sublessee; family members of an approved lessee or sublessee may reside with the lessee or sublessee. Under no circumstances may more than one family reside in a Unit at any time. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The provisions of this Subsection 17.1 shall not be applicable to Units used by the Developer for model apartments or sales offices.

As used herein, "family," or words of similar import, shall be deemed to include a spouse and children permanently living together in the Unit with the Owner, designated occupant, or approved lessee. As used herein, "guests," or words of similar import, shall include only those persons who have a principal residence other than the Unit. Unless otherwise determined by the Board, any person occupying a Unit without the Unit Owner or a member of his family being present shall not be deemed to be a guest but, rather, shall be deemed to be a lessee for purposes of this Declaration, 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 Section 17, and the Board of Directors of the Association shall enforce, and the Unit Owners shall comply with these provisions with due regard for such purpose.

17.2 Children. Children shall be permitted to reside in a Unit subject to the provisions of Subsection 17.1 of this Declaration.

17.3 Pets. Unit Owners, may keep up to one cat or one dog, ~~or two cats and two dogs~~, provided

that no pet is kept, bred, or maintained for any commercial purpose and does not become a nuisance or annoyance to other Unit Owners. No pet kept by a Unit Owner shall exceed fifty (50) pounds. Unit Owners must pick up all solid wastes of their pets and dispose of such waste appropriately. All pets, including cats, must be leashed or caged at all times when outside a Unit. Pets may not be kept overnight in any Common Element or Limited Common Element. No reptiles, amphibians, or other wildlife shall be kept anywhere within the Condominium Property. Without limiting the generality of Section 17 of this Declaration, violation of the provisions of this Subsection 17.3 shall entitle the Association to all of its rights and remedies, including, without limitation, the right to fine Unit Owners as provided in any applicable Rules and Regulations, and to require that any pet be permanently removed from the Condominium Property. No guest, lessee, or invitee shall bring any animal whatsoever upon the Condominium Property. Any Owner maintaining a pet upon the

Condominium Property, or whose guests, lessees, or invitees bring any animal upon the Condominium Property, shall be fully responsible for, and shall bear the expense of, any damage to persons or property resulting therefrom. The costs of any such damage shall be determined by the Board of Directors and collected by the Association.

17.4 Alterations. Without limiting the generality of Subsection 10.2 of this Declaration, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant to such Unit, or to the Common Elements, including, without limitation, painting or other decorating of any nature, installation of surface coatings, installation of any electrical wiring, antenna, satellite dish, machinery, pools, whirlpools, saunas, or air-conditioning units, or in any manner changing the appearance of any portion of the Building which is visible from the outside, without obtaining the prior written consent of the Association pursuant to Subsection 10.1 of this Declaration.

17.5 Use of Common Elements. The Common Elements shall be used only for the purposes for which they are intended, are reasonably suited, and which are incident to the residential use and occupancy of Units.

17.6 Nuisances. No nuisances, as defined by the Association, shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to the Unit Owners or occupants, or which interferes with the peaceful possession or proper use of the Condominium Property by the Unit Owners or occupants.

17.7 No Improper Uses. No improper, offensive, hazardous, or unlawful use shall be made of the Condominium Property, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium Property shall be observed. Violations of laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction over the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain, repair, or replace such portion of the Condominium Property, as determined by this Declaration. Notwithstanding the foregoing restrictions, the Association shall not be liable to any person or entity for its failure to enforce the provisions of this Subsection 17.7.

17.8 Leases. No portion of a Unit, other than an entire Unit, may be rented. All leases shall be in writing, shall be approved by the Association, and shall provide that the Association shall have

the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the attached Exhibits, the Rules and Regulations adopted pursuant to such documents, or other applicable provisions of any agreement, document, or instrument governing the Condominium. The Association may deny its permission to lease a Unit on any reasonable grounds. No lease shall be approved for a term of less than sixty thirty days or one two (2) calendar months, whichever is less, or for a term in excess of one (1) year. The Association shall have the right to require that all tenants deposit in escrow with the Association a sum not in excess of one (1) month's rent, which may be used by the Association to repair any damage to the Common Elements or other property owned by the Association resulting from acts or omissions of lessees (as determined in the sole discretion of the Association). Regardless of whether or not expressed in the applicable lease, all Unit Owners shall be jointly and severally liable with their lessees to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the lessee or for the acts and omissions of his lessees which constitute a violation of, or noncompliance with, the provisions of this Declaration and the Rules and Regulations. All leases shall also comply with Sections 17 and 18 of this Declaration. This Subsection 17.8 shall also apply to subleases, lease assignments, and lease renewals. No lease approved by the Association shall be amended or modified without the Association's approval. The Association may charge a lease approval fee as set by the Board not to exceed of fifty dollars (\$50.00) or the maximum amount permitted by the Act, as it may be amended from time to time. Provided, however, that no fee shall be charged in connection with the approval of an amendment, modification, or extension of a previously approved lease, or if prohibited by the Act. Occupancy by any person other than the owner and owner's family (or primary occupant and the primary occupant's family) shall be considered occupants under a lease even if no consideration is paid or there is not a written occupancy agreement.

In making its determination as to whether to approve a lessee of a Unit, the Association shall not discriminate on the bases of race, age, gender, religion, national origin, or physical or mental handicap.

17.9 Exterior Improvements; Landscaping. Without limiting the generality of Subsections 10.1 and 17.4 of this Declaration, no Unit Owner shall cause anything to be attached to, or displayed on the exterior walls, doors, terraces, or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of plant life outside the Owner's Unit, without the prior written consent of the Board. The Board of Directors shall determine and shall alter the landscaping, exterior color of the improvements and roof in the discretion of the Board.

No Unit Owner may alter the configurations of the balconies or terraces, or hang plants, draperies, screens, laundry or other items from them.

17.10 Weight and Sound Restrictions. Hard or heavy surface floor coverings, such as tile and wood, will be permitted throughout the Unit, provided, however, that the proposed use of a hard surface floor covering anywhere within the Unit must be submitted to and approved by the Board, and must also meet applicable structural requirements. Any hard surface flooring shall be applied over a resilient, sound-absorbing underlayment of fiberboard, cork, or similar material approved by

the Board, except this restriction shall not apply to Units that do not have any Units directly below. Any carpeting installed shall be applied over underlying padding of sufficient quality and quantity to prevent noises created by normal usage from reaching the Unit below. Also, the proposed installation of any improvement or heavy object must be submitted to and approved by the Board, must be compatible with the structural design of the building, and must be adequately insulated from sound transmission. The Board may require, at the Unit Owner's expense, that a structural engineer review the proposed installation of any improvement or heavy object. All other areas of the Unit are to receive sound absorbent, soft surface floor coverings, such as carpet. The Board will have the right to specify the exact floor covering, if any, used on the terraces. Unit Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom, and the Association shall have the right to require immediate removal of any violation. If a Unit Owner violates this Subsection 17.10, the Association shall have the right to require the Unit Owner to remove all floor coverings in violation and install an approved underlayment or install carpeting over the floor coverings in violation, all at the expense of the Unit Owner.

18. Selling and Mortgaging of Units. No Unit Owner other than the Developer may sell or lease his Unit except by complying with the following provisions:

18.1 Approval by Association. Any Unit Owner who receives a *bona fide* offer to purchase or lease his Unit (such offer to purchase is called an "Outside Offer"; any party making such an 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 mail to the Board of the receipt of such Outside Offer. Such notice shall state the name and address of the Outside Offeror, the terms of the proposed transaction, and such other information as the Board may reasonably require. The Offeree Unit Owner shall submit in writing such further information with respect to the Outside Offer as the Board may reasonably request. Not later than thirty (30) days after receipt of such notice, the Board or its designee shall issue its Certificate of Approval or Notice of Disapproval of the Outside Offeror.

Any deed or lease to an Outside Offeror shall automatically be deemed to provide that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of the Declaration, the attached Exhibits, the Rules & Regulations adopted pursuant to such documents, and as such documents may be amended from time to time, and all other agreements, documents, or instruments affecting the Condominium Property.

Any purported sale or lease of a Unit in violation of this Section 18 shall be voidable within six (6) months, at the election of the Board of Directors, and the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to void an unapproved conveyance or lease. A Unit Owner who fails to comply with the requirements of this Subsection 18.1 shall reimburse the Association for all expenses, attorneys' fees, and costs incurred in connection with such proceedings.

Notwithstanding anything herein contained to the contrary, the Board of Directors, in exercising its rights as provided in this Section 18, shall make no decision on the basis of race, gender, religion, national origin, or physical or mental handicap.

18.2 No Severance of Ownership. No part of the 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 Common Elements.

18.3 Certificate of Approval. A certificate executed and acknowledged by an officer of the Association, stating that the requirements of Section 18.1 of this Declaration have been satisfied by a Unit Owner, shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate, upon request, to any Unit Owner. The Association may charge a fee in connection with the furnishing of such certificate as established by the Board, not to exceed the highest amount permitted under the Act as it is amended from time to time.

18.4 Exceptions. The provisions of Subsection 18.1 of this Declaration shall not apply with respect to any sale or conveyance of any Unit: (a) by the Unit Owner to the Owner's spouse, adult children, parents, parents-in-law, adult siblings, or a trustee, 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) by the Developer; or (c) by the Association.

18.5 Gifts, Devises, Etc. Any Unit Owner shall be free to transfer the Owner's Unit by gift, to devise said Unit by will, or to have said Unit pass by intestacy, without restriction. Provided, however, that each succeeding Unit Owner shall be bound by, and said Unit subject to, the provisions of this Section 18.

19. Compliance and Default. Each Unit Owner, every occupant of a Unit, and the Association shall comply with the terms of this Declaration, its attached exhibits, and any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time. Violation by a tenant would also be considered violation of the Owner. 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 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement made necessary by the Unit Owner's negligence, by that of the Unit Owner's family members, guests, employees, agents, or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

19.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit, or fails to observe and perform all of the provisions of the Declaration, its attached exhibits, and any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time, or any other agreement, document, or instrument affecting the Condominium Property, the Association shall have the right to proceed in a court of equity to require performance and compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner for the sums necessary to do whatever work is required to prevent or repair damage to the Common Elements or the Units, to hire an attorney, to charge the Unit Owner

for reason-able attorney's fees incurred in seeking the performance and compliance of the Unit Owner, and to collect such charges.

19.3 Fines. In the event a Unit Owner or occupant fails to abide by all of the provisions of the Declaration, its attached exhibits, or any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time, or any other agreement, document, or instrument affecting the Condominium Property, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors, but in no event shall such fine exceed the maximum amount permitted by the Act, as the Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner or tenant, signed by an officer of the Association, and shall state the amount of the fine and the violation for which the fine is imposed.

19.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, its attached exhibits, and or Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees (including attorneys' fees related to any appeals).

19.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Act, this Declaration, its attached exhibits, and any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time, shall not constitute a waiver of their right to do so in the future.

20. Termination of Condominium. The Condominium shall continue until a withdrawal of the Condominium Property from the provisions of the Act is authorized by an affirmative vote of at least eighty percent (80%) of all Unit Owners. In the event such withdrawal is authorized, the Condominium Property shall be subject to an action for partition by any Unit Owner, as if owned in common, in which event the net sale proceeds shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying the basis of the termination. A Certificate of Termination shall be effective when recorded in the Public Records of Collier County, Florida.

21. Covenants Running With the Land. All provisions of this Declaration, the attached Exhibits, and any Rules and Regulations adopted pursuant to such documents, to the extent applicable and unless otherwise expressly provided to the contrary, shall be perpetual covenants running with the Land. All provisions of this Declaration, the attached Exhibits, and any Rules and Regulations adopted pursuant to such documents, shall be binding upon and inure to the benefit of the Developer and all subsequent owners of the Land, their respective heirs, personal representatives, successors, and assigns. The provisions of such documents 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 other occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of such documents, including, but not limited to, a ratification of any

appointments of attorneys-in-fact contained within such documents.

22. Additional Provisions.

22.1 Interpretation. The Board of Directors shall be responsible for interpreting the provisions of this Declaration, the attached Exhibits, and any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time. The Board's interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is reasonable shall conclusively establish the validity of such interpretation.

22.2 Mortgagees. Any provision of this Declaration notwithstanding, the Association shall not be responsible to a 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.

22.3 Exhibits. The Exhibits attached to this Declaration and all materials contained within them are incorporated herein by reference, except that the written provisions set forth in this Declaration shall control over any conflicting provision or measurement set forth in the Exhibits.

22.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required, the signature of a Vice-President may be substituted, and wherever the signature of the Secretary of the Association is required, the signature of an Assistant Secretary may be substituted, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

22.5 Governing Law. Should any dispute arise between any of the parties whose rights or duties are affected or determined by this Declaration, the attached Exhibits, or any Rules and Regulations adopted pursuant to such documents, such dispute shall be governed by the laws of the State of Florida.

22.6 Severability. The invalidity, in whole or in part, of any provision of this Declaration, the attached Exhibits, or any Rules and Regulations adopted pursuant to such documents, as such documents may be amended from time to time, shall not affect the validity of the remaining portions of such documents, which shall remain in effect.

22.7 Waiver. No provision of this Declaration shall be deemed to have been waived by reason of any failure to enforce the such provision, without regard to the number of violations or breaches which may occur.

22.8 Ratification. Each Unit Owner, by reason of having acquired ownership (by whatever method acquired), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and any Rules and Regulations adopted pursuant to such documents, are fair and

reasonable in all material respects.

22.9 Captions. The captions within this Declaration, the attached Exhibits, or any Rules and Regulations adopted pursuant to such documents, as the such documents may be amended from time to time, 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.

22.10 Conflicts. In the event of a conflict between any provision of this Declaration and any other document, this Declaration shall take precedence over the Articles, the Bylaws, and other attached Exhibits, as well as the Rules and Regulations; the Articles shall take precedence over the Bylaws and the Rules and Regulations; and the Bylaws shall take precedence over the Rules and Regulations; as such documents may be amended from time to time.

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

22.12 Commencement of Litigation. The Association shall not commence litigation against any person or entity (with the exception of Unit Owners for purposes of foreclosing on a lien for non-payment of assessments) without the affirmative vote of seventy-five percent (75%) of all Unit Owners.

23. Surface Water Management System Area Restrictions and Easements

23.1 Improvements. No improvements, planting or other material (other than landscape material) of any kind shall be constructed, erected or installed, unless constructed, erected or installed by Developer, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water, in any portion of a Water Management System reserved for, or intended by Developer to be reserved for, drainage ways, sluice-ways or for the accumulation of run-off waters, as reflected in any plat or instrument of record, without the specific written permission of the Association.

23.2 Ingress and Egress. An Owner shall in no way deny or prevent ingress and egress by Developer or Association to any Water Management System for maintenance or landscape purposes. The right of ingress and egress, and easements therefor, are hereby granted in favor of the Developer, Association and all appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress, and easements therefor, are hereby specifically reserved and created.

23.3 Modification. There shall be no filling in or any water retention or Water Management System on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established water retention and Water Management Systems that have been or may be created by easement. No Owner may draw water for irrigation or other purposes from any Water Management System nor is any boating or swimming in such areas allowed.

23.4 Prohibitions. The conservation lands and conservation buffer zones identified on the Plat, or any instrument of record, may not be altered from their natural state other than to remove exotic vegetation, or to install and maintain Common Area Facilities, or to provide the utilities and drainage as shown on the plat and approved construction plans. Activities prohibited within the conservation lands and conservation buffer zones include, but are not limited to, construction or placing of buildings on or above the ground; dumping or placing soils or other substances such as trash; removal or destruction of trees, shrubs or other vegetation, with the exception of exotic vegetation removal; dredging or removal of soil material; diking or fencing; and any other activities detrimental to drainage, flood control, water conservation, erosion control or fish and wildlife habitat conservation or preservation.

Notwithstanding the foregoing, the Association shall have the power and authority to convey title to, and maintenance responsibilities for, all or such portion of the Water Management Systems as Association elects; provided, however, said conveyance may only be made to a governmental agency, which may assume responsibility for the proper maintenance and care of the Water Management System.

23.5 Responsibility. All Water Management Systems within the Property will be the ultimate responsibility of Association. Association may enter any Common Area and make whatever improvements or repairs are deemed necessary to restore proper water management. The cost shall be an expense of Association. In addition thereto, any Owner or other beneficiary of the Water Management System shall have the right to institute litigation against Association to ensure that the Water Management System, and easements therefor, are properly and continuously maintained. Cost of operating and maintaining the system shall be a part of the maintenance amounts collected from Unit Owners.

23.6 Construction. Nothing in this Section shall be construed to allow construction of any new water management facility or alteration of Water management Systems without first obtaining the necessary permits from all governmental regulatory agencies having jurisdiction.

23.7 Amendment to Documents Affecting Surface Water Management. Any amendment to the association documents which would affect the surface water management systems must be submitted to the Florida Department of Environmental Protection for a determination of whether the amendment necessitates a modification of the environmental reserve or surface water management permit. If modification is necessary, the amendment will not be finalized until the modification is approved.

23.8 SWFWMD. the Southwest Florida Water Management District, shall have the right to take enforcement measures, including civil action or injunction and/or penalties against the Association

IN WITNESS WHEREOF, the Developer has caused this Declaration of Condominium to be executed by its duly authorized officer this 30th day of March, 2009

WITNESSES:

Mariners Palm Harbor, LLC:

Signed in the presence of:

By: [Signature]
Its: CO-UGP

[Signature]
Print Name: David P. Anglin

[Signature]
Print Name: Brenda Watson

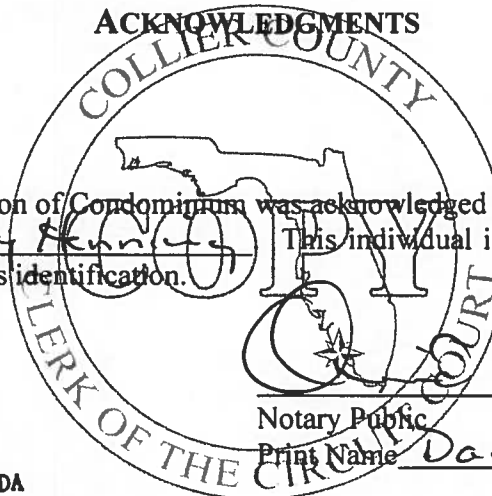
ACKNOWLEDGMENTS

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing Declaration of Condominium was acknowledged before me this 30th day of March, 2009, by Serry Kennedy This individual is personally known to me or has presented as identification.

[SEAL]

NOTARY PUBLIC-STATE OF FLORIDA
David P. Anglin
Commission # DD861555
Expires: FEB. 15, 2013
BONDED THRU ATLANTIC BONDING CO., INC.



[Signature]
Notary Public
Print Name: David P. Anglin

JOINDER AND CONSENT

Liberty Bank, A Federal Savings Bank, ("Mortgagee") is the owner and holder of a mortgage and Security Agreement executed on the 25th day of June, 2007 and recorded on the 2nd of July, 2007 in Official Records Book 4251 at Page 3854, Public Records of Collier County, Florida, does hereby approve, adopt, join in and consent to the foregoing Declaration of Condominium of Mariners Palm Harbor Condominium, and each Exhibit attached thereto, and agrees that the lien of said Mortgage and Security Agreement shall be subject to the provisions of said Declaration of Condominium.

Nothing contained in this Joinder of Mortgagee shall be deemed in any way to limit, alter, or otherwise affect the mortgage held by the Mortgagee, or the priority of the lien created thereby. The sole purpose of this Joinder is to acknowledge the consent of Mortgagee to the execution and recording of the aforementioned Declaration of Condominium.

This instrument is executed by the undersigned for the purpose of complying with and pursuant to section 718.104(3), Florida Statutes.

Executed this 9 day of March, 2009.

WITNESSES:

Signed in the presence of:

Deidra A. Wright
Witness

Deidra A. Wright
Printed Name

Linda A. Connelly
Witness

Linda A. Connelly
Printed Name

MORTGAGEE:

Liberty Bank, A Federal Savings Bank,

BY: [Signature]
NAME: Robert Smedley
TITLE: President & CEO

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 9th day of March, 2009 by Robert Smedley of Liberty Bank, a Federal Savings Bank, on behalf of the Bank. This individual is personally known to me or has presented _____ as identification.

Brenda J. Detwiler
NOTARY PUBLIC

[SEAL]



EXHIBIT "A"
Mariners Palm Harbor Condominiums
Plot Plan, Floor Plans, Surveys & Architectural Exhibits



MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

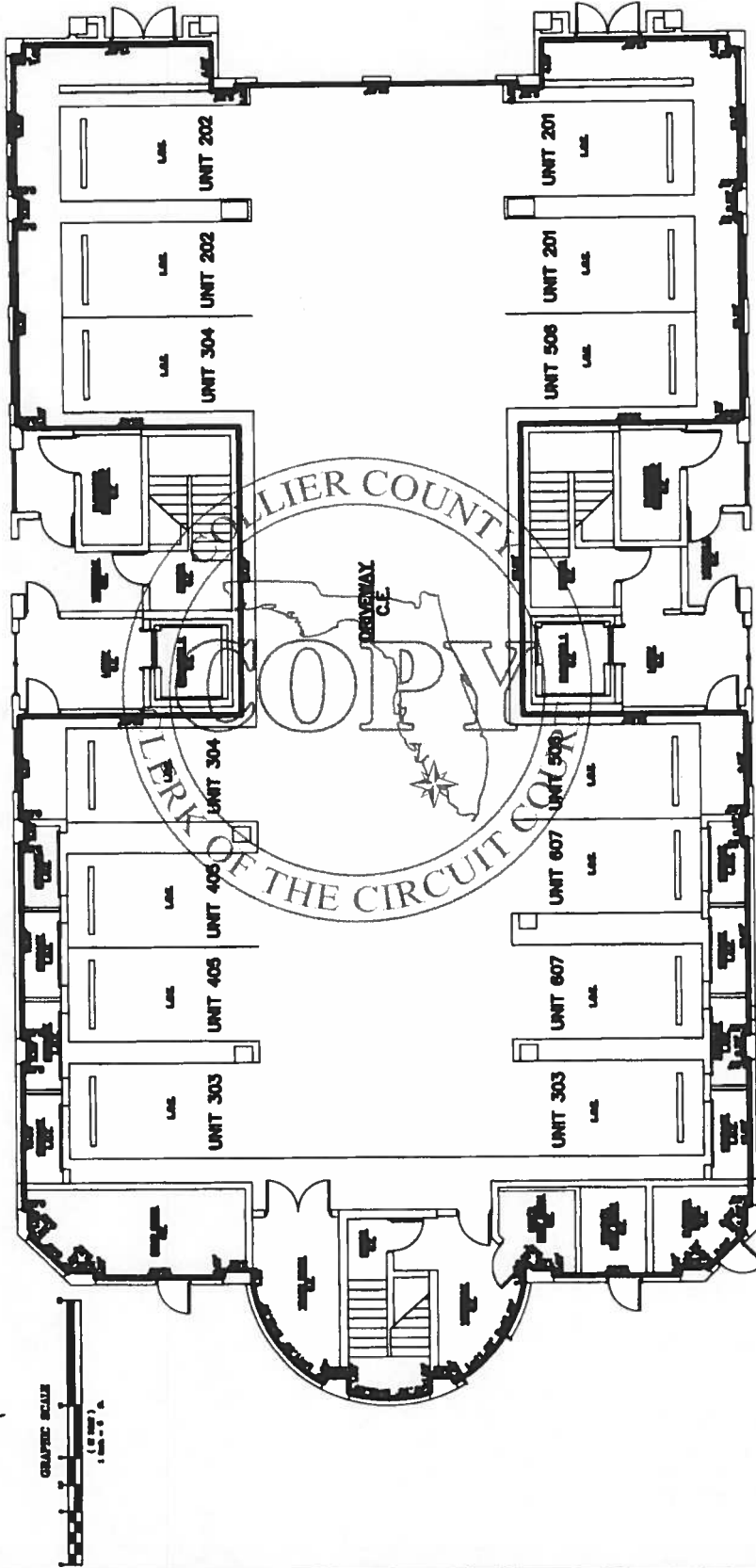


EXHIBIT "A"
A GRAPHICAL DEFINITION OF:
GROUND FLOOR PLAN

General Notes
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

AMERICAN PROFESSIONAL CONSULTANTS
10000 W. US HWY. 1, SUITE 100
FORT MYERS, FLORIDA 33907
TEL: 941-355-1100
FAX: 941-355-1101
WWW.APCFL.COM

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

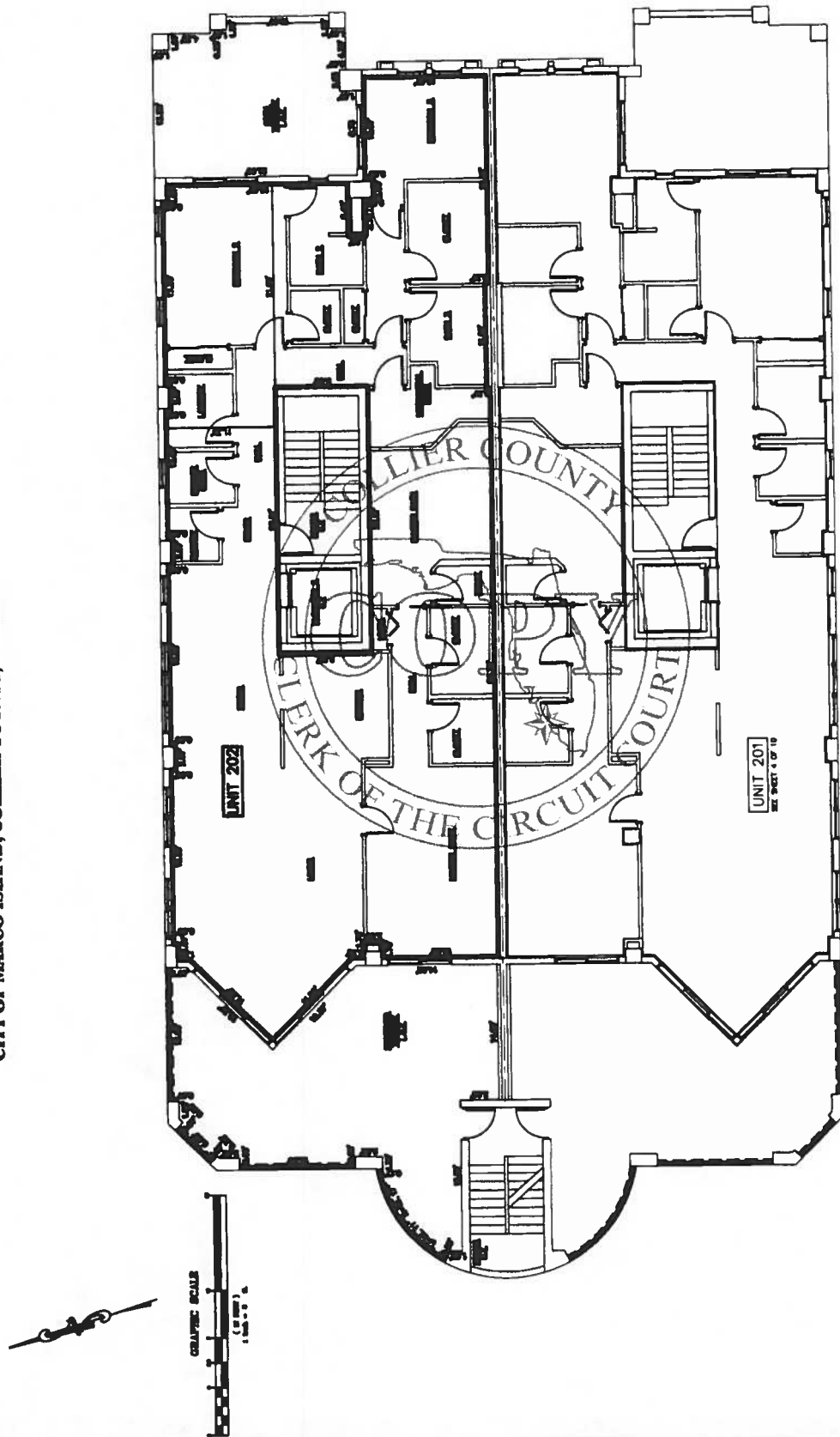


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
SECOND FLOOR UNIT 202

General Notes
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

AMERICAN ARCHITECTURAL CONSULTANTS
ARCHITECTS
10000 W. BAYVIEW BLVD., SUITE 1000
DADE COUNTY, FLORIDA 33147-1000
TEL: (305) 551-1000 FAX: (305) 551-1001

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 26, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

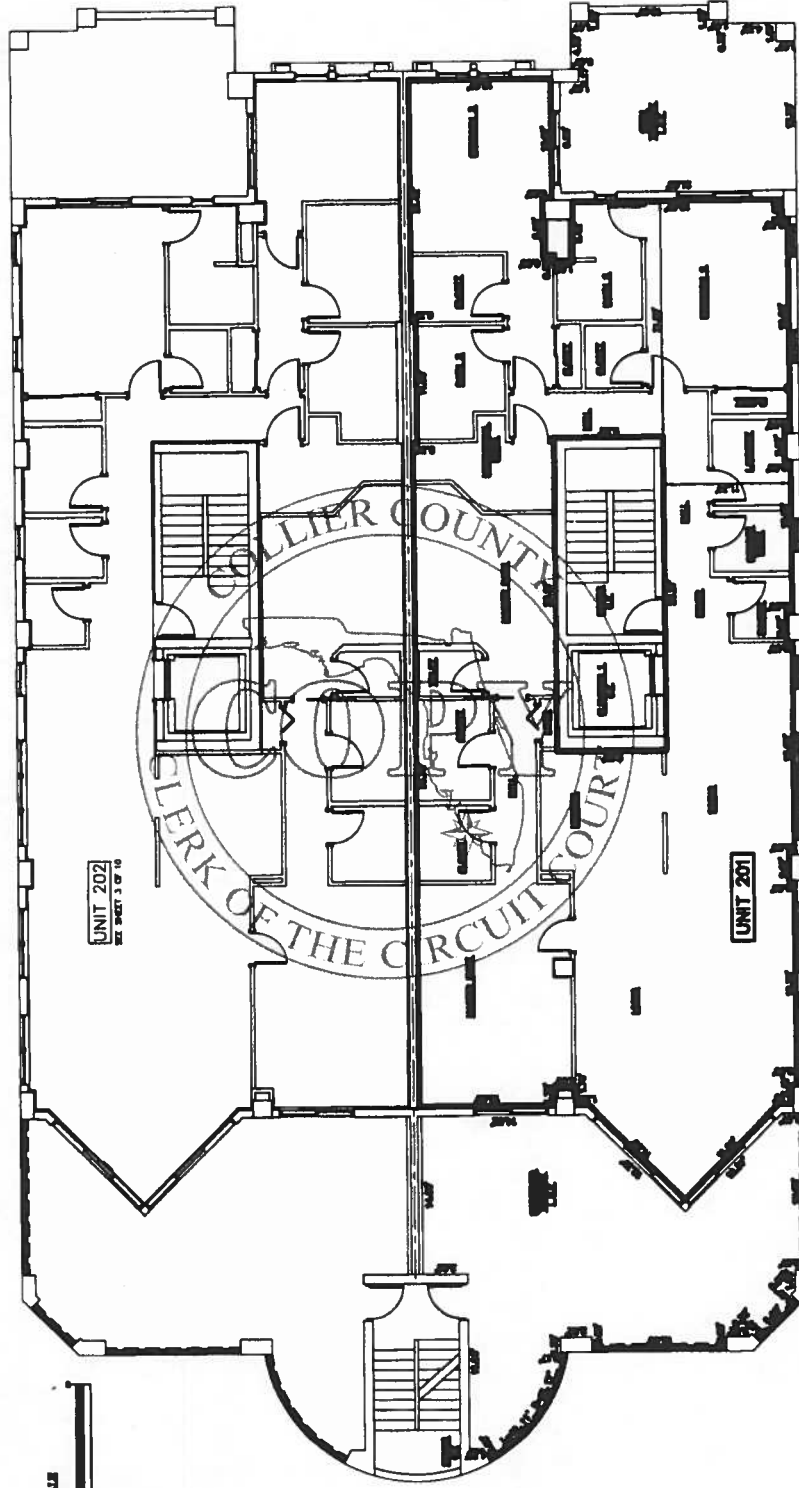


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
SECOND FLOOR UNIT 201

General Notes
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

AMERICAN ENGINEERING CONSULTANTS
INCORPORATED
1000 N. W. 10th Ave., Suite 200
Fort Lauderdale, FL 33304
Phone: (305) 555-1234
Fax: (305) 555-1235

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

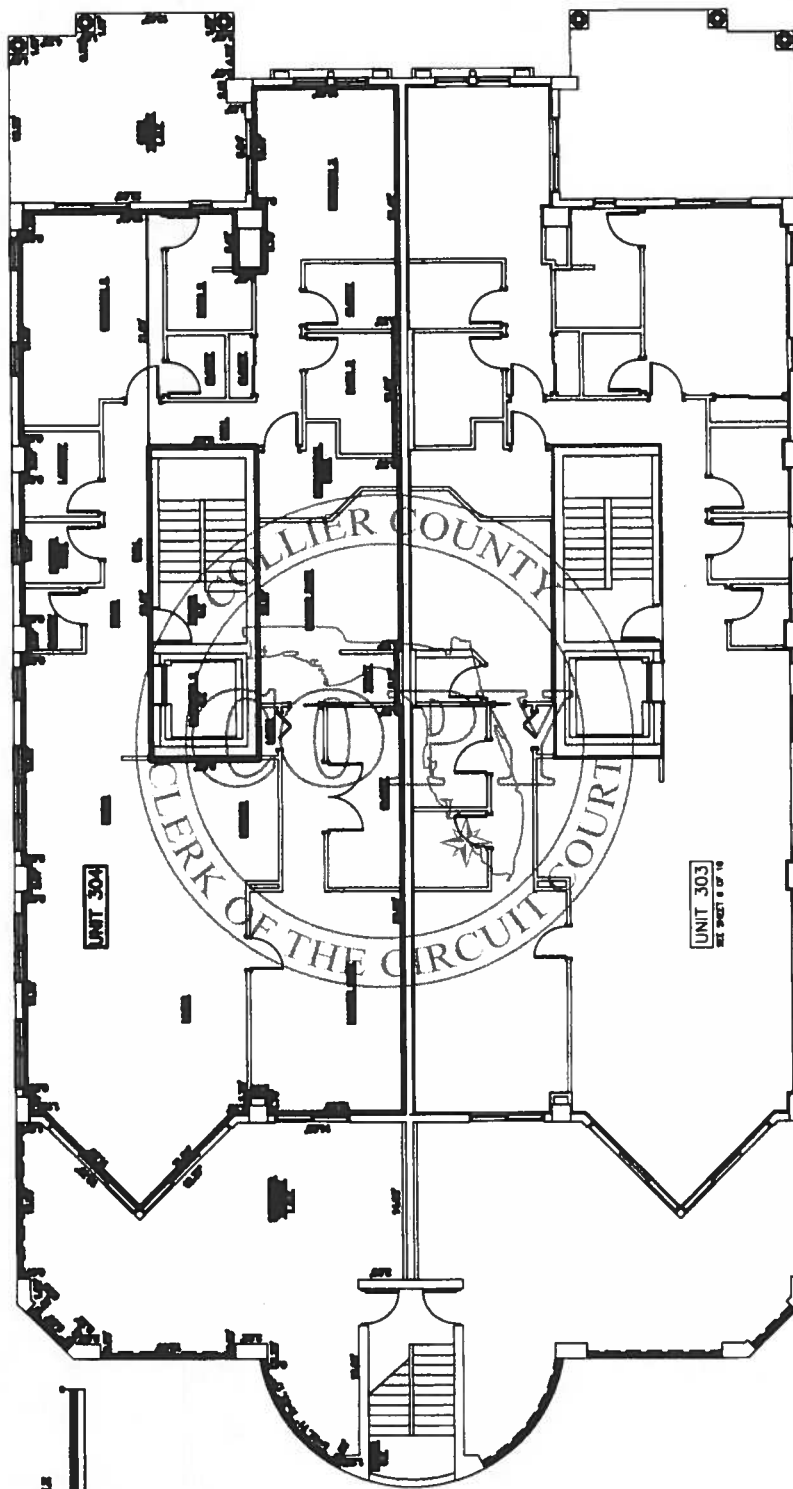


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
THIRD FLOOR UNIT 304

General Notes:
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS SHALL BE AS SHOWN ON THIS PLAN.
3. ALL DIMENSIONS SHALL BE AS SHOWN ON THIS PLAN.

AMERICAN ENGINEERING CONSULTANTS
OF MARCO ISLAND, FLORIDA
CORPORATE OFFICE: 1000 MARCO ISLAND BLVD., SUITE 200
MARCO ISLAND, FLORIDA 33994-1000

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 26, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

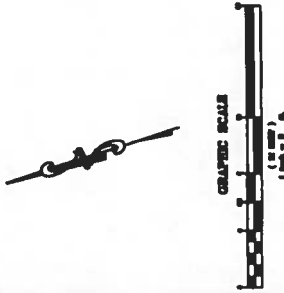
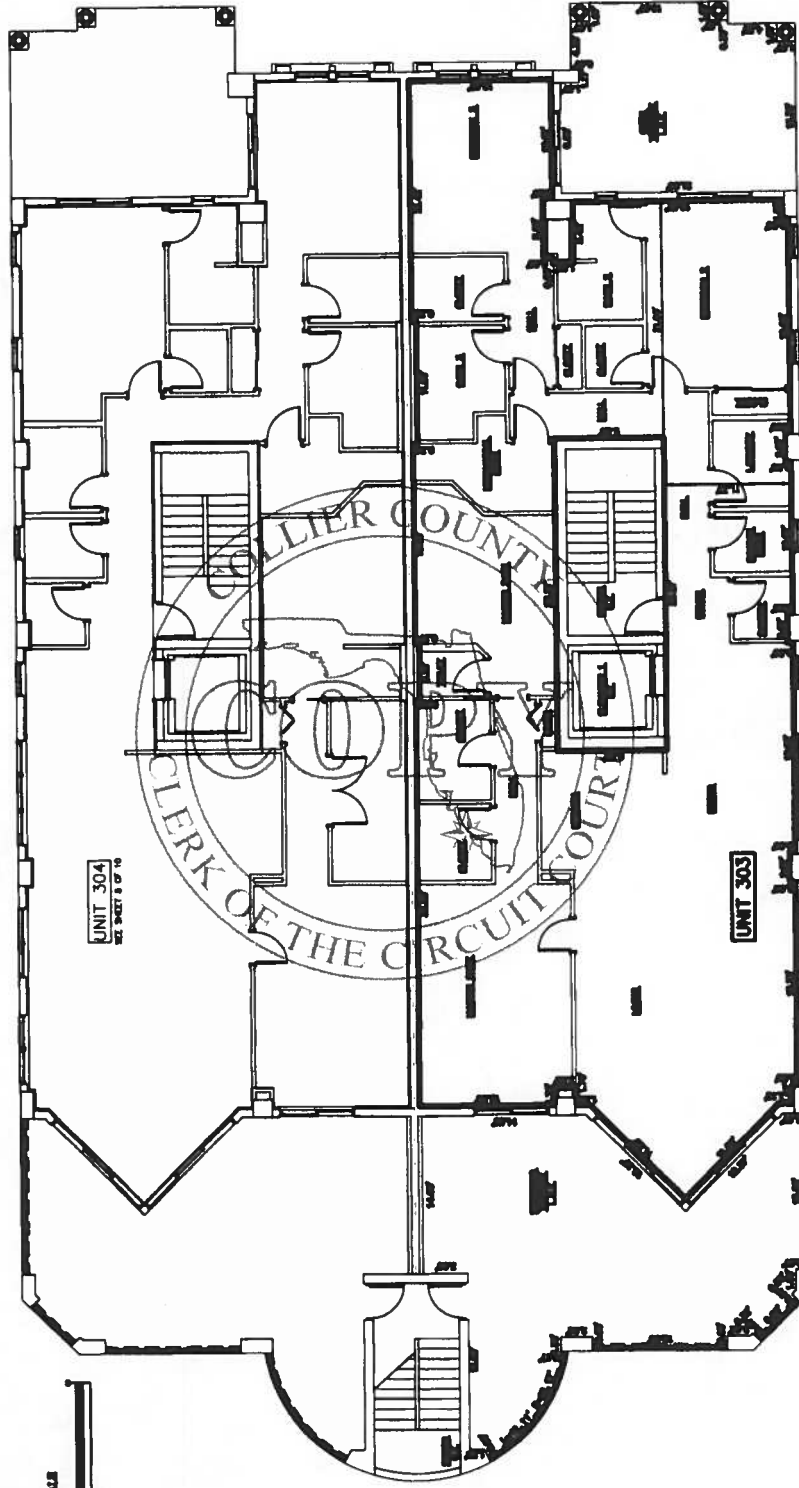


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
THIRD FLOOR UNIT 303

General Notes:
1. ALL DIMENSIONS SHOWN ARE APPROXIMATE.
2. ALL DIMENSIONS SHALL BE AS SHOWN ON THIS PLAN.
3. ALL DIMENSIONS SHALL BE AS SHOWN ON THIS PLAN.

AMERICAN ARCHITECTURAL CONSULTANTS
10000 W. BAYVIEW BLVD., SUITE 100
FORT MYERS, FLORIDA 33907
TEL: 941-938-1111
FAX: 941-938-1112

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

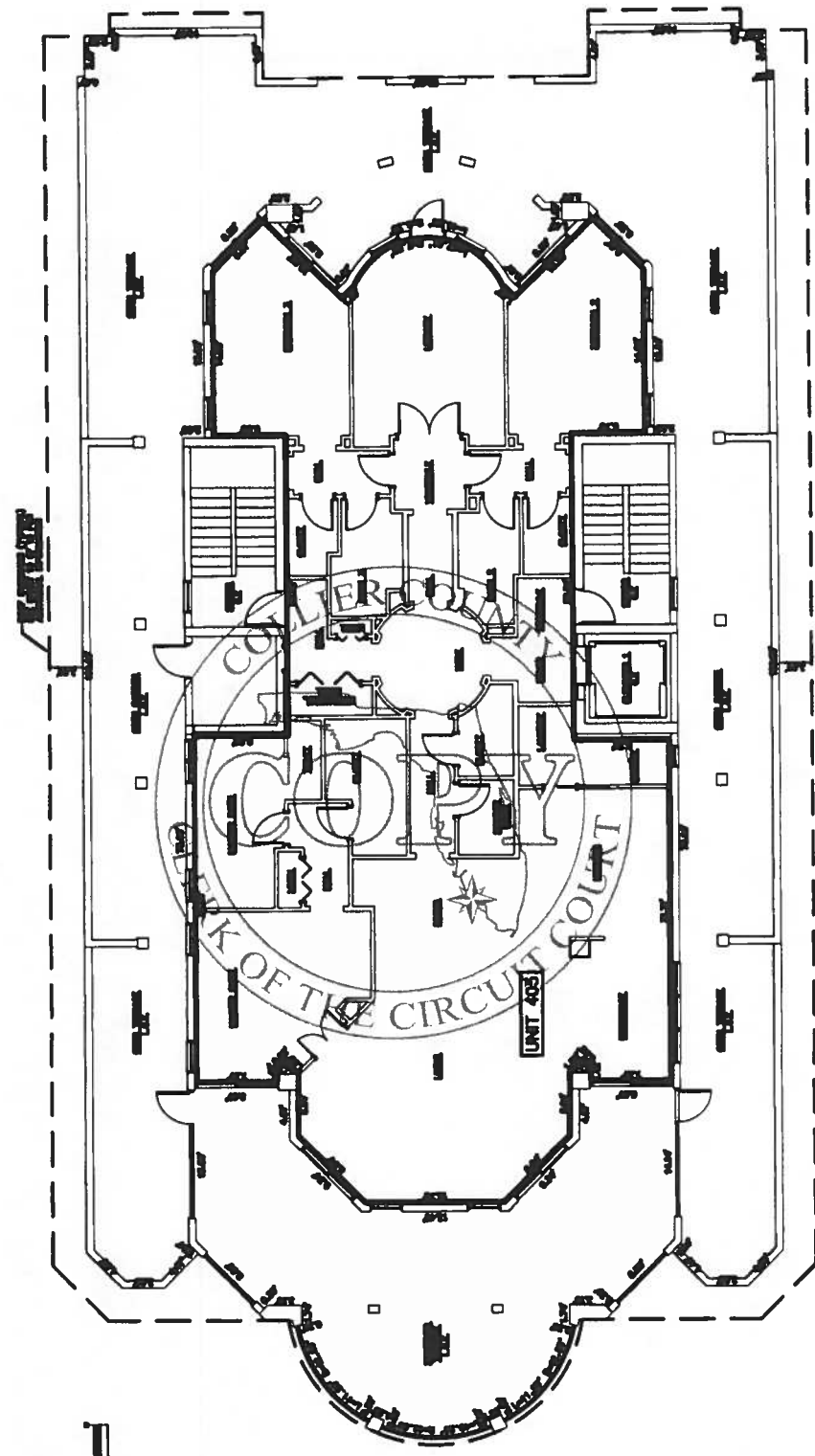
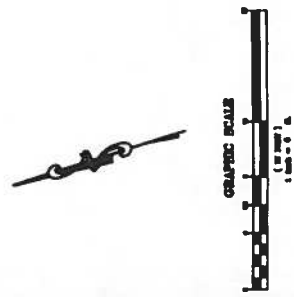


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
FOURTH FLOOR UNIT 405

General Notes:
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

AMERICAN STANDARD CONSULTANTS
CORPORATE OF AMERICAN STANDARD CONSULTANTS
CORPORATE OF AMERICAN STANDARD CONSULTANTS

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 26, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

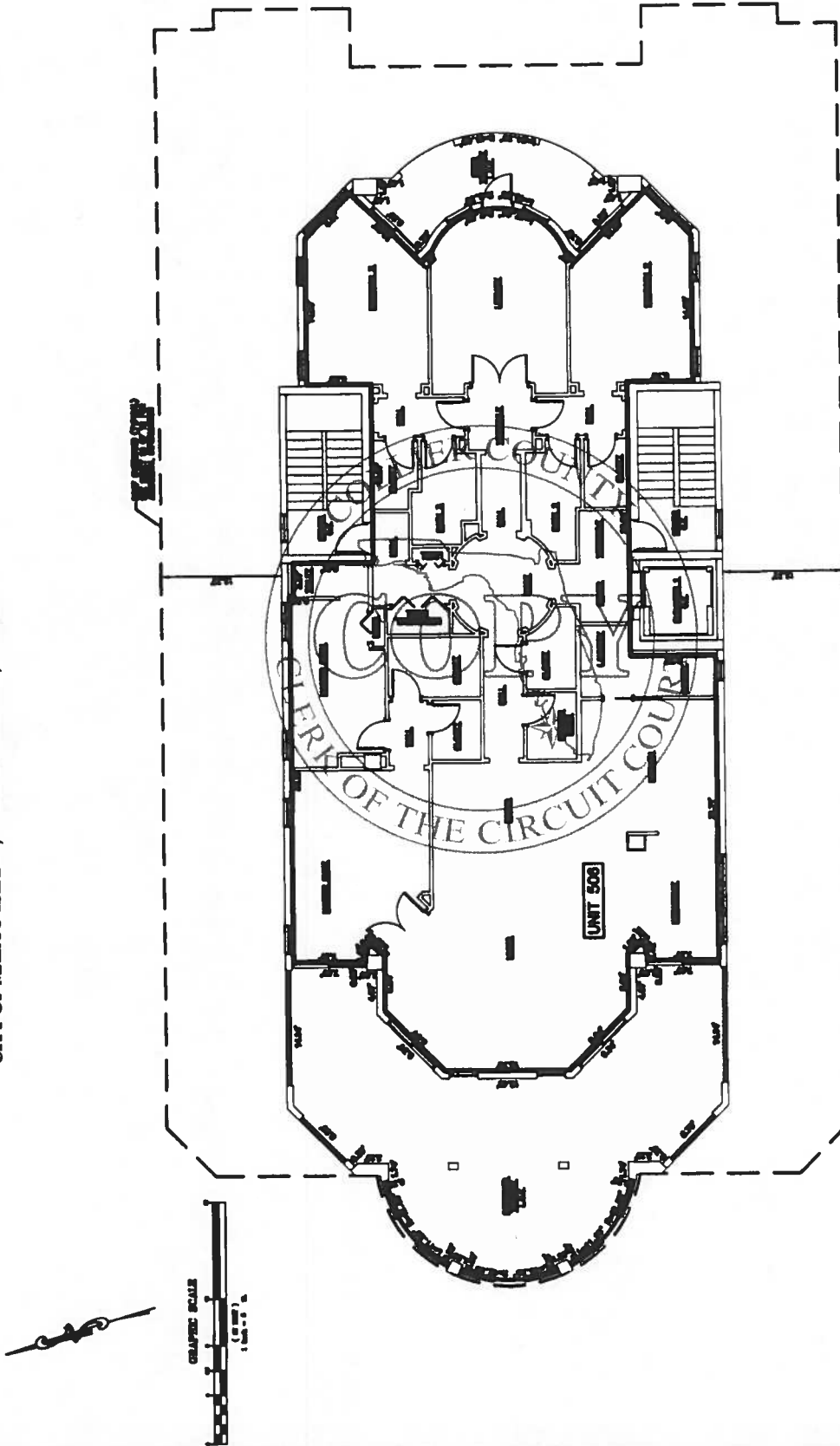


EXHIBIT "A"
A GRAPHICAL DEPICTION OF:
FIFTH FLOOR UNIT 506

General Notes
1. SEE EXHIBIT "B" FOR UNIT 506.
2. SEE EXHIBIT "C" FOR UNIT 507.
3. SEE EXHIBIT "D" FOR UNIT 508.
4. ALL DIMENSIONS SHOWN ARE IN FEET AND INCHES.

AMERICAN ENGINEERING CONSULTANTS
OF MARCO ISLAND, FLORIDA
CERTIFICATE OF ADOPTION OF THIS PLAN
DATE: 10/10/00 BY: [Signature]

MARINERS PALM HARBOR, A CONDOMINIUM
SECTION 26, TOWNSHIP 52 SOUTH, RANGE 26 EAST
CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK, PAGE

PAGE 9 OF 10

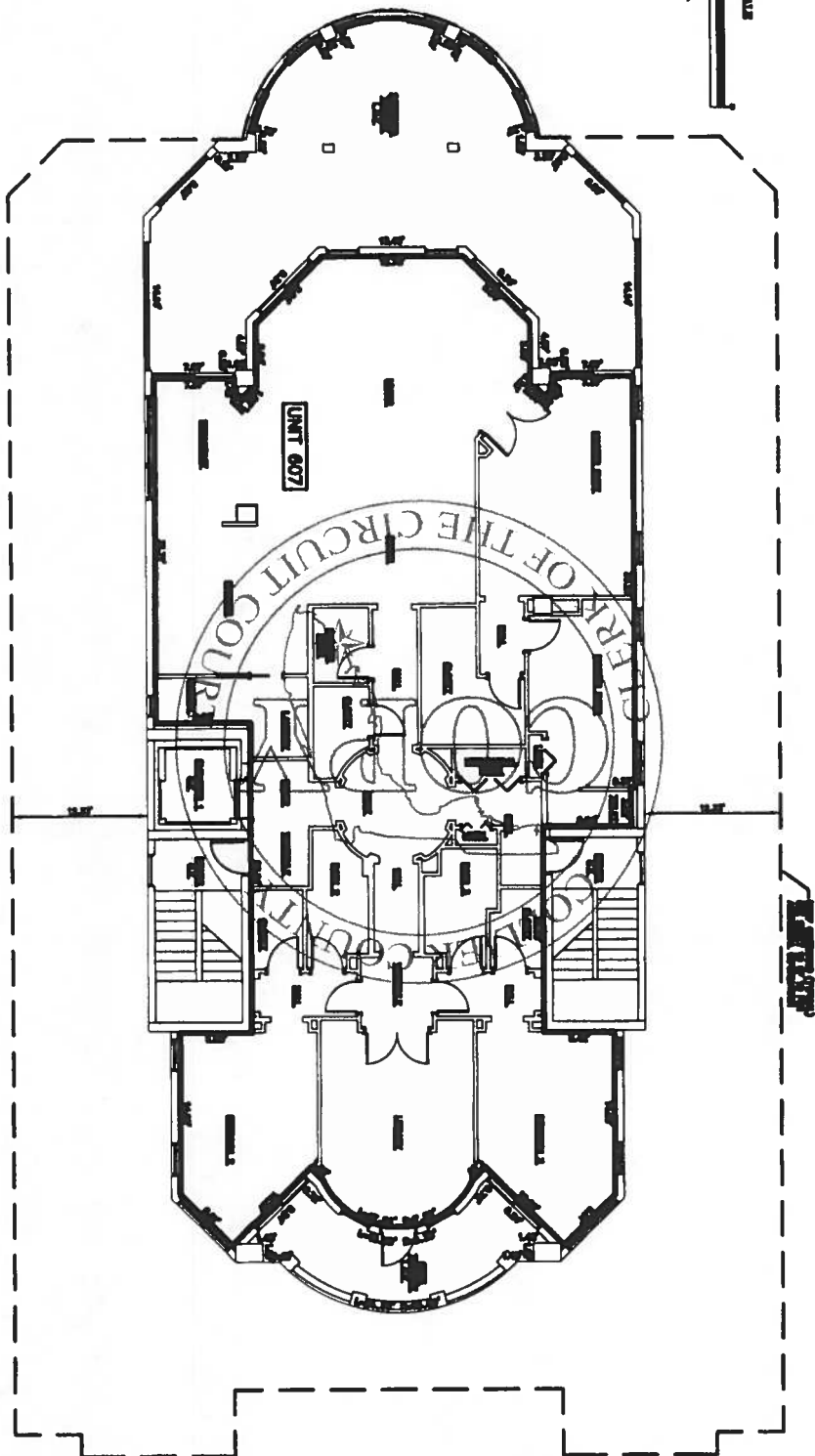


EXHIBIT "A"
A GRAPHICAL DETECTION OF:
SIXTH FLOOR UNIT 607

General Notes:
1. SEE EXHIBIT "A" FOR UNIT 607.
2. SEE EXHIBIT "B" FOR UNIT 608.
3. SEE EXHIBIT "C" FOR UNIT 609.

AMERICAN ASSOCIATION OF CONSTITUTIONAL LAWYERS
OFFICE OF CONSTITUTIONAL LAW
1111 K STREET, N.W.
WASHINGTON, D.C. 20004-2020

MARINERS PALM HARBOR, A CONDOMINIUM
 SECTION 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST
 CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK _____, PAGE _____

PAGE 10 OF 10

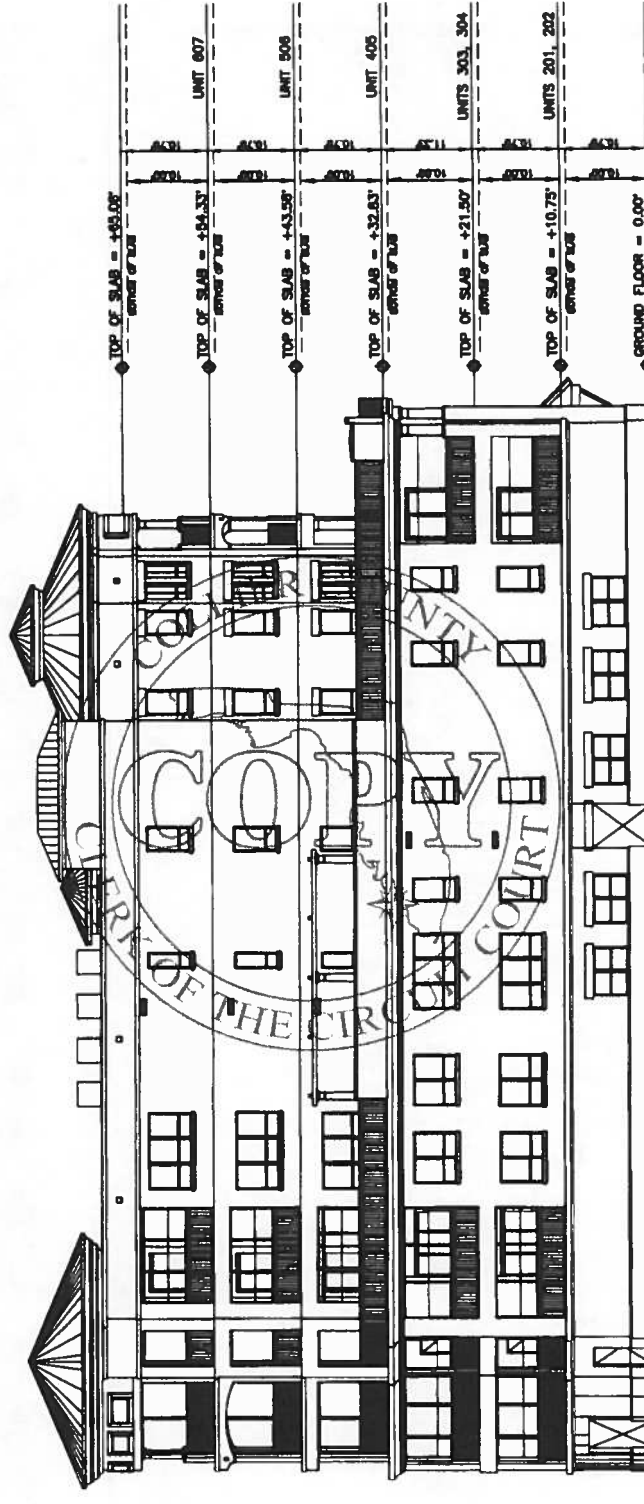


EXHIBIT "A"
 A GRAPHICAL DEPICTION OF:
 BUILDING SIDE VIEW ELEVATION
 (NOT TO SCALE)

General Notes
 1. SEE EXHIBIT "B" FOR FLOOR PLANS.
 2. SEE EXHIBIT "C" FOR SECTION 20.
 3. ALL DIMENSIONS ARE IN FEET AND INCHES.

AMERICAN CONCRETE CONCRETE
 10000 W. 10TH AVE., SUITE 100
 MIAMI, FL 33156
 (305) 551-1000
 FAX (305) 551-1001
 WWW.ACCONCRETE.COM

**American Engineering Consultants
of Marco Island, Inc**

573 Bald Eagle Drive
Marco Island, Florida 34145
239-394-1697 - FAX 239-394-7571

March 10, 2009

**Certificate of Surveyor
Mariners Palm Harbor, A Condominium
Section 20, Township 52 South, Range 26 East
Marco Island, Florida**

I, T. Alan Neal of Collier County, Florida, hereby certify:

*That I am a Professional Surveyor and Mapper holding certificate number PLS # 4656, authorized to practice in the State of Florida, as provided by the laws of the state.

*That this certificate is made to Mariners Palm Harbor, a Condominium, in compliance with Section 718.104(4)(e), Florida Statutes.

*That the construction of the improvements within Mariners Palm Harbor, a Condominium is substantially complete to that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements, and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.

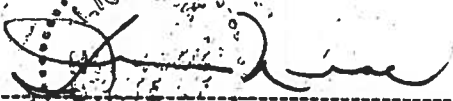
*That planned improvements including landscaping, utilities services and access to Mariners Palm Harbor, a Condominium and common element facilities have been substantially completed.

Certified to: Mariners Palm Harbor, a Condominium

*No other persons or entity may rely on this certification.

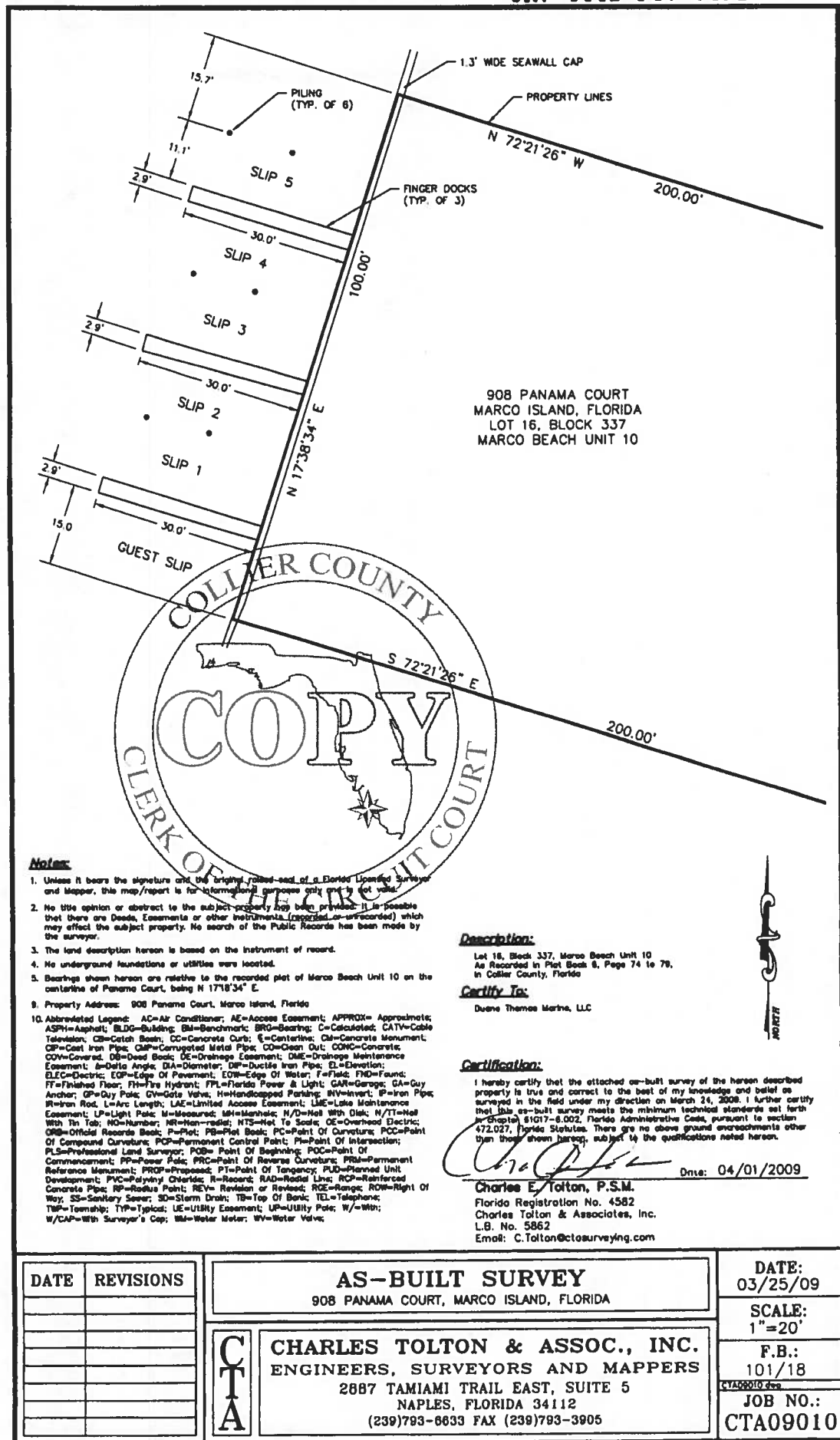
*Not valid without signature and raised seal of Surveyor,

American Engineering Consultants of Marco Island, Inc., Cert. Of Authorization, LB # 7419



T. Alan Neal
Professional Land Surveyor
State of Florida Reg. # 4656

03/10/09



**CERTIFICATE OF SURVEYOR
Mariners Palm Harbor, A Condominium**

I, Charles E. Tolton of Collier County, Florida, hereby certify:

- 1. That I am a Professional Surveyor and Mapper holding certificate number 4582 authorized to practice in the State of Florida, as provided by the laws of the State.**
- 2. That this certificate is made as to Mariners Palm Harbor, a Condominium, in compliance with Section 718.104(4)(e), Florida Statutes.**
- 3. That all Boat Slips are a correct as-built survey of the hereon described property.**

Signed: _____

**Charles E. Tolton P.S.M.
Professional Surveyor and Mapper
State of Florida, License Number 4582**

[SEAL]

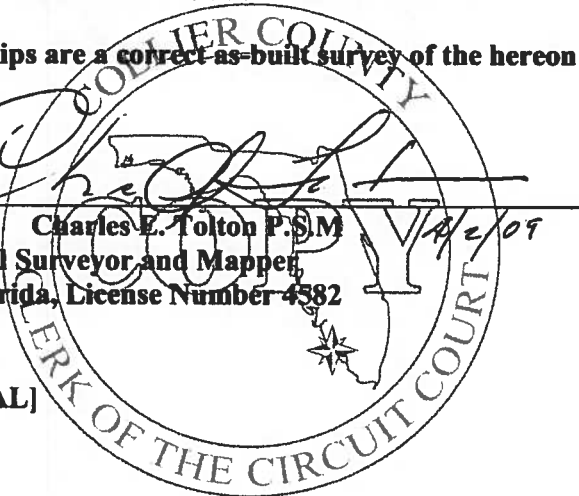
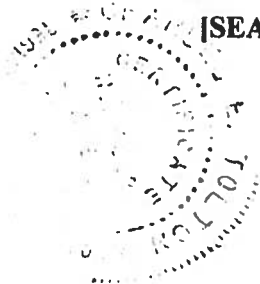


EXHIBIT "B"
Mariners Palm Harbor Condominiums
Articles of Incorporation



ARTICLES OF INCORPORATION
Mariners Palm Harbor Condominium Association, Inc.
A Florida Corporation Not For Profit

The undersigned hereby submits these Articles for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certifies as follows:

ARTICLE I
Name

The name of the corporation shall be Mariners Palm Harbor Condominium Association, Inc., which corporation shall herein be referred to as the "Association", and whose principal place of business shall be 4344 Corporate Square, #1, Naples, Florida 34104.

ARTICLE II
Purpose

The purpose for which the corporation is organized is for the operation and management of condominium buildings and grounds for the use and benefit of the owners of the Condominium Units located in Collier County, Florida, known as Mariners Palm Harbor Condominiums, and any other purpose permitted under Florida Law.

ARTICLE III
Corporate Existence

This Association shall continue to exist so long as the Condominium known as Mariners Palm Harbor Condominium shall be in existence.

ARTICLE IV
Directors

1. The business of this Association shall be conducted by a Board of Directors having three (3) Directors as shall be determined by the Bylaws. The initial Board of Directors shall consist of the following three (3) members:

Jeffry Henning
4344 Corporate Square #1
Naples, Florida 34104

Al Koch
4344 Corporate Square #1
Naples, Florida 34104

Heather K. Henning
4344 Corporate Square #1
Naples, Florida 34104

ARTICLE V
Registered Agent and Incorporator

The address of the Incorporator and the corporation's initial registered office shall be located at 4344 Corporate Square, #1, Naples, Florida, 34104, and the Incorporator and initial Registered Agent at such address shall be Jeffry Henning.

ARTICLE VI
Powers

The corporation is authorized to exercise all powers of a corporation not for profit under Chapters 617 and 718 of Florida Statutes, including but not limited to the power to:

- a. Own and convey property.
- b. Operate and maintain the surface water management system facilities, including all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.
- c. Establish rules and regulations.
- d. Assess members and enforce assessments.
- e. Sue and be sued.
- f. Contract for services to provide for operation and maintenance of the surface water management system facilities if the association contemplates employing a maintenance company.
- g. Require all the lot owners, parcel owners, or unit owners to be members.
- h. Exist in perpetuity; however, the articles of incorporation shall provide that if the association is dissolved, the control or right of access to the property containing the surface water management facilities shall be conveyed or dedicated to an appropriate governmental unit or public entity and that if not accepted, then the surface water management system facilities shall be conveyed to nonprofit corporation similar to the association
- i. Take any other action necessary for the purposes for which the association is organized.

ARTICLE VIII
Amend

These Articles may be amended by affirmative votes of 2/3 of the voting interests present and voting at a duly called meeting of the corporation

IN WITNESS WHEREOF, the subscriber, being the undersigned person, named as incorporator, has executed these Articles this 30th day of March, 2009.

Jeffrey Henning
Jeffrey Henning, Member

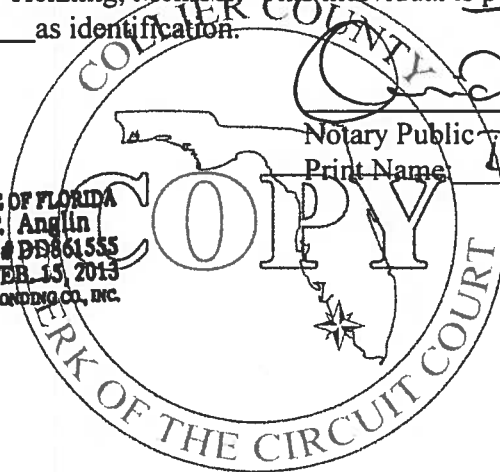
ACKNOWLEDGMENT

STATE OF Florida
COUNTY OF Collier

The foregoing Articles of Incorporation were acknowledged before me this 30th day of March, 2009, by Jeffrey Henning, Member. This individual is personally known to me or has provided _____ as identification.

[SEAL]

NOTARY PUBLIC-STATE OF FLORIDA
David P. Anglin
Commission # DD661555
Expires: FEB. 15, 2013
BONDED THRU ATLANTIC BONDING CO., INC.



Notary Public
Print Name: David P. Anglin

EXHIBIT "C"
Mariners Palm Harbor Condominiums
Bylaws



BYLAWS
Mariners Palm Harbor Condominium Association, Inc.
A Florida Corporation Not for Profit

ARTICLE 1
General

1.1 **Bylaws.** These are the Bylaws of Mariners Palm Harbor Condominium Association, Inc., hereafter referred to as the "Association", a Florida corporation not for profit organized for the purpose of administering Mariners Palm Harbor Condominium, pursuant to the Florida Condominium Act.

1.2 **Principal Office.** The initial principal office of the Association is 4344 Corporate Square, #1, Naples, Florida, 34104, until the construction of the Condominium is completed, at which time it will be at the Condominium.

1.3 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced, or otherwise placed upon any document or writing of the corporation where a seal may be required.

ARTICLE 2
Members

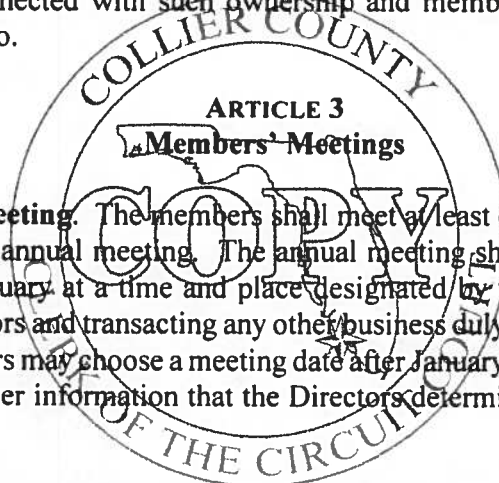
2.1 **Qualification.** The members of the Association consist of all persons who are record Owners of a fee simple or life estate interest in any Unit in the Condominium. In the event of a life estate only the life tenant is qualified to be a member. Membership becomes effective upon recordation of a deed evidencing Condominium Unit ownership in the Public Records of Collier County, Florida, after having been approved as provided in the Declaration, and upon providing a copy of the recorded deed to the Secretary of the Association, if requested. If the Owner of a Condominium Parcel is not a natural person, the subject entity shall designate a natural person who is entitled to occupy the Condominium Parcel as primary occupant, and only such natural person shall be considered a member for the purpose of exercising that Unit's voting rights. In the case of a Unit subject to an agreement for deed, the contract vendee is deemed the Owner of the Unit.

2.2 **Voting Rights.** A member of the Association is entitled to one vote for each Unit owned by that member. The total votes shall not exceed the total number of Units. The vote of a Unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a Condominium Unit is owned by one person, such person's right to vote is established by the record title to the Unit. If a Unit is owned jointly by two or more persons, that Unit's vote may be cast by any record Owner present at the meeting at which the vote is taken. If two or more Owners of a Unit are present and cannot agree among themselves how their one vote shall be cast, that vote shall not

be counted for any purpose. If the Owner of a Unit is not a natural person, the vote of that Unit shall be cast by the Unit's primary occupant designated as set forth in Section 2.1 above.

2.3 Change of Membership. Following written approval of the Association, as elsewhere required in the condominium documents, a change of membership in the Association is established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing record title to a Unit in the Condominium and by the delivery to the Association of a copy of such instrument, if requested. The grantee in such instrument thus becomes a member of the Association and the membership of the prior Owner is thereby automatically terminated. The new Owner's name and address will be entered on the roster of the Condominium. The Association may charge a fee for the approval of the transfer applicant.

2.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from any liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.



3.1 Annual Meeting. The members shall meet at least once in each calendar year and such meeting shall be the annual meeting. The annual meeting shall be held in Collier County, Florida, each year in February at a time and place designated by the Board of Directors for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members. The Directors may choose a meeting date after January if necessary to obtain year end financial statements or other information that the Directors determine is necessary for the annual meeting.

3.2 Special Members' Meetings. Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and must be promptly called by the Board upon receipt of a written request from the members entitled to cast fifty percent (50%) of the votes of the entire membership. Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members making the request. Business at any special meeting is limited to the items specified in the request and contained in the notice of meeting.

3.3 Notice of Meetings. Notice of the annual members' meetings must include an agenda. Notice of all members' meetings (including the annual meeting) must include the time, date, and place of the meeting. The notice must be mailed, hand delivered or electronically transmitted to those unit owners consenting to electronic transmission and providing an address for electronic transmission to each Unit Owner at least fourteen (14) days prior to the meeting to each member at

his address as it appears on the books of the Association. The notice shall be posted in a conspicuous place on the Condominium property at least fourteen (14) continuous days preceding the annual meeting. Notwithstanding the foregoing, where a Unit is owned by more than one person, the Association shall provide notice, for meetings, and all other purposes, to just one address which Developer initially identifies for such purpose and thereafter to the address that one or more of the Owners of the Unit gives the Association in writing, except that if no address is given or the Unit Owners cannot agree on an address, notice shall be delivered to the address provided on the deed of record. The Unit Owner bears the responsibility for notifying the Association of any change of address or ownership. An officer of the Association or other person providing notice of the members' meeting shall provide an affidavit or U.S. Postal Service certificate of mailing, to be included in the official records of the Association affirming that the notice was mailed or hand delivered to each Unit Owner at the last address furnished to the Association. Unit Owners may waive notice of specific meetings.

3.4 Quorum. A quorum at members' meetings shall be attained by the presence, either in person, by general proxy, or by limited proxy, of persons entitled to cast a majority of the votes of the entire membership. After a quorum has been established at a members' meeting, the subsequent withdrawal of members, so as to reduce the number of members 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 thereof.

3.5 Vote Requirement. The acts or resolutions approved by a majority of the votes cast at a meeting at which a quorum is attained are binding upon all Unit Owners for all purposes, except where a higher vote is required by law or by any provision of the condominium documents.

3.6 Proxies. Votes at a meeting may be cast in person by written ballot or voting machine or by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting and shall not be used for the election of Directors. A limited proxy and not a general proxy shall be used to vote on waiving or reducing reserves, waiving financial statement requirements, amending the Declaration, Bylaws, or Articles of Incorporation, and voting on any other matter for which a vote is required or permitted under Florida condominium law. A general proxy may be used for other matters for which limited proxies are not required and for non-substantive changes to items for which a limited proxy is required and given. No proxy shall be valid for a period longer than ninety days after the date of the first meeting for which it was given. A proxy is revocable. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Unit, specify the date, time, and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting. Holders of proxies need not be members. No proxy is valid if it names more than one person as the holder of the proxy, but the holder has the right, if the proxy so provides, to substitute another person to hold the proxy. The Association must keep in its records for one year all proxies used at a meeting.

3.7 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained.

3.8 **Order of Business.** The order of business at members' meetings shall be substantially as follows, unless directed otherwise by the Board of Directors:

- (a) Proof of notice of meeting or waiver of notice;
- (b) Election of Directors;
- (c) Call of roll and certification of quorum and proxies;
- (d) Reading and approval or rejection of any unapproved minutes (unless the reading is waived with approval of the members);
- (e) Reports of Officers;
- (f) Reports of Committees;
- (g) Unfinished Business;
- (h) New Business;
- (i) Adjournment.

3.9 **Minutes.** Minutes of all meetings of members and of the Board of Directors shall be kept in a business-like manner and available for inspection at reasonable times for a period of seven years after the meeting by members or their authorized representatives and by Board members.

3.10 **Procedural Rules.** The President or, if the President is unavailable, the Vice-President, Secretary, or Treasurer, as available, shall conduct the meeting in an orderly manner.

3.11 **Action by Members Without Meeting.** The members shall hold an annual meeting to act on the budget and on reserve accounts, for election of Directors, and for such other business as may come before the meeting. Otherwise, any action required or permitted to be taken at a meeting of the members unless otherwise barred by law may be taken without a meeting if written consents, setting forth the action to be taken, are signed by the members entitled to vote having not less than the minimum number of votes that would be necessary to take such action at a meeting, or a majority of the total voting interest in the Association, whichever is greater. Upon receiving the requisite number of written consents, the Board of Directors shall take the authorized action by adopting a resolution to that effect. Within ten days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed to be in derogation of the members' rights to call a special meeting of the membership, as elsewhere provided in these Bylaws.

ARTICLE 4 Board of Directors

4.1 **Management and Business.** The management of the property and business of the

Association and the administration of the affairs of the Association shall be by a Board of Directors which may exercise all Association powers not specifically prohibited. The members of the Board of Directors shall be referred to herein as Directors. The Board of Directors may also be referred to as the Board of Administration.

4.2 Number and Terms of Service. Three (3) Directors shall constitute the entire Board of Directors during the period of Developer control. The number of Directors thereafter may remain the same or by majority vote of the Board of Directors increased to a number from three (3) to seven (7), inclusive. If the number of Directors is increased to four (4) or more, Directors shall be elected for staggered terms of office. At the first meeting at which Directors with staggered terms are to be elected, the first half of the Directors shall be elected for a two-year term that ends with the qualification of successor Directors elected at the annual election after the next annual election, and the second half of the Directors shall be elected for a one-year term that ends with the qualification of successor Directors elected at the next annual election. At the second and subsequent meetings at which Directors with staggered terms are to be elected, the newly-elected Directors shall serve a two-year term, such that half of the Directors are elected at each annual meeting. If an odd number of Directors exist, the extra Director shall be included in the first half of the Directors initially elected for a two-year term. In the event of a vacancy the replacement Director, if any, will serve the length of the unexpired term unless otherwise provided by law.

4.3 Qualifications. Except for Directors appointed by the Developer, each Director must be (i) a Unit Owner, or (ii) the spouse of a Unit Owner, or (iii) the primary occupant of a Unit owned by other than a natural owner.

4.4 Nominations and Elections.

(a) **Notice.** The members of the Board of Directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the Board of Directors, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless permitted by Florida law. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Unit Owner entitled to a vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Together with the written notice and agenda as set forth in Section 3.3, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8½ by 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing or

delivery and copying to be borne by the Association. However, the Association has no liability for the contents of the information sheets prepared by the candidates. No Unit Owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A Unit Owner who needs assistance in casting the ballot for the reasons stated in Section 101.051, Florida Statutes, may obtain assistance in casting the ballot. Any Unit Owner violating this provision may be fined by the Association in accordance with Section 718.303, Florida Statutes. Unit Owners may waive notice of specific meetings. The Association shall have the right, by a majority vote of the Unit Owners and to the extent permitted by Florida law, to provide for different voting and election procedures by amendment to these Bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(b) **Quorum.** There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of Directors of the Board of Directors.

(c) **Election.** The Board of Directors shall be elected by a written ballot or voting machine and not by proxies, and the regular election shall be on the date of the annual meeting. No Unit Owner is allowed to have any other person vote his ballot. Ballots shall be secret and ballots improperly cast shall be invalid. The Unit Owners entitled to vote shall elect as many Directors as there are regular terms of Directors expiring or vacant. If, however, there are not more candidates than vacancies on the Board of Directors, no election of ballot is required. Directors shall be elected by a plurality of the votes cast. No Owner of any single Unit may cast more than one vote for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes are elected, except that a run-off will be held to break a tie vote.

4.5 **Vacancies on the Board.** If the office of any Director becomes vacant for any reason other than the recall of Board members, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to hold office until the next regularly scheduled election. If the vacancy is caused by the recall of a board member or members and less than a majority of the board members are removed, the vacancy or vacancies shall be filled by a majority of the remaining Directors promptly choosing a successor to hold office until the next regularly scheduled election. If, as a result of recall, a majority of the board members are removed the vacancies shall be filled in accordance with the procedures set forth by Florida law.

4.6 **Removal of Directors.** Any or all Directors, except those appointed by the Developer, may be removed with or without cause in accordance with Florida law including, but not limited to, Section 718.112(2)(k), Florida Statutes.

4.7 Organizational Meeting. The organizational meeting of the Board of Directors shall be held immediately following the meeting at which the Directors were elected, or within ten (10) days after the election of new Directors at such place and time as may be fixed by the Directors at the annual meeting at which they were elected.

4.8 Meetings. Meetings of the Board may be held at such time and place in Florida, as determined from time to time by a majority of the Directors. There shall be a meeting of the Board in December of each year to adopt an annual budget for the following fiscal year. Notice of meetings shall be given to each Director, personally, by electronic transmission or by mail, telephone or telegram, at least two (2) days prior to the day named for such meeting. Any Unit Owner may attend, tape-record, and videotape meetings of the Board as governed by any reasonable rules adopted by the Division. Unit Owners have the right to speak with reference to all designated agenda items. The Association may adopt reasonable rules regarding recording and the videotaping of the meeting and the frequency and duration and manner of Unit Owner statements. Any item not included on the meeting notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. See Section 6.2 for special notice requirements for the budget meetings and Section 6.6 for special notice requirements for the imposition of special assessments. Meetings of a committee to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this paragraph, unless those meetings are exempted from this paragraph by an amendment to these Bylaws.

4.9 Special Meetings. Special meetings of the Board may be called by the President, and shall be called by the Secretary at the written request of any two of the Directors. Notice of the meeting shall comply with the requirements in Sections 4.7 and 4.9 hereof.

4.10 Notice to Unit Owners. Meetings of the Board of Directors at which a quorum of the members is present shall be open to all Unit Owners and notices of all meetings, with an identification of agenda items, shall be posted conspicuously on the Condominium property at least forty-eight (48) continuous hours preceding each meeting, except in an emergency. Written notice of any Board meeting at which non-emergency special assessments, or at which an amendment to rules regarding Unit use, will be considered shall be mailed or delivered to the Unit Owners or may be sent by electronic transmission to those Owners consenting to same and providing an address for electronic transmission and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed with the Association's official records. Upon notice to the Unit Owners, the Board shall by duly adopted rule designate a specific location on the Condominium property or Association property upon which all notices of Board meetings shall be posted. If there is no Condominium property or Association property upon which notices can be posted, notices of Board meetings shall be mailed or delivered

at least fourteen (14) days before the meeting to the Unit Owner. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Meetings of a committee to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the Board or make recommendations to the Board regarding the Association budget are exempt from this paragraph.

4.11 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver is deemed equivalent to the giving of notice.

4.12 Quorum of Directors. A quorum shall consist of a majority of all Directors. Members of the Board of Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone or similar communicative equipment, provided that all members attending or participating by telephone can hear each other member. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.13 Vote Required. The acts approved by a majority of those Directors present at a meeting at which a quorum is present constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable law. Directors may not vote by proxy or secret ballot at Board meetings, except that officers may be elected by secret ballot. A vote or abstention for each Board member present shall be recorded in the minutes.

4.14 Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.15 Adjourned Meetings. At any meeting of the Board of Directors, the majority of those present may adjourn the meeting from time to time. At any meeting reconvened after adjournment, provided a quorum is present and the appropriate notice given, any business that might have been transacted at the meeting originally called may be transacted.

4.16 The Presiding Officer. The President of the Association, or in his absence, the Vice-President (if any, and if no Vice-President, then the Secretary), shall be the presiding officer at all meetings of the Board of Directors. If none are present, the presiding officer shall be selected by majority vote of those present.

4.17 Powers and Duties of Board of Directors. All powers and duties granted to the Association by law, as modified and set forth in the Declaration, the Articles of Incorporation, and these Bylaws, shall be exercised by the Board of Directors, subject to approval or consent of the Unit Owners only when such is specifically required.

4.18 Receipt of Complaint by Board of Directors. When a Unit Owner files a written complaint by certified mail with the Board of Directors, the Board shall respond in writing to the Unit Owner within thirty (30) days of receipt of the complaint. The Board's response shall either give a substantive response to the complainant, notify the complainant that a legal opinion has been requested, or notify the complainant that advice has been requested from the Department of Business and Professional Regulation (the "Division," which term shall include applicable name changes). If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the complainant. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the complaint, provide in writing a substantive response to the complainant. The failure to provide a substantive response to the complainant as provided herein precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.

4.19 Director's Fees. No compensation or fees shall be paid to the Directors for services as Directors. No officer or director or manager shall accept any item or service of value for his benefit or for the benefit of his immediate family, when consideration has not been provided, from any person providing or proposing to provide goods or services to the Association. This provision does not preclude the Board of Directors from employing Directors as employees of the Association.

4.20 Reimbursement of Expenses. Directors may be reimbursed for any reasonable expenditures incurred for the benefit of the Association upon approval of the President, or in the case of expenditures by the President, upon approval of the Vice-President (or Secretary, if there is no Vice-President). This provision does not preclude the Board of Directors from employing Directors as employees of the Association.

4.21 Committees. The Board of Directors may appoint from time to time such committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The Board, by resolution adopted by two-thirds of the Directors, may remove members of any committee established by it.

4.22 Conflict of Interest. No contract or other transaction between this Association and one or more of its Directors, or any corporation, firm, association, or entity in which one or more of its Directors are directors or officers, or are financially interested, shall be either void or voidable because of such relationship or interest, or because such Director or Directors are present at the meeting of the Board of Directors where such transaction is authorized, approved or ratified, or because a Director's vote is counted for such authorization, approval or ratification if:

- (a) The fact and nature of such relationship or interest is disclosed or known to the Board prior to the authorization, approval or ratification of the contract or transaction; or

- (b) The contract or transaction is fair and reasonable to the Association at the time it is authorized by the Board.

ARTICLE 5 Officers

5.1 Officers and Elections. The executive officers of the Board of Directors shall be a President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be removed with or without cause by vote of two-thirds of all Directors at any meeting. Any eligible person may hold two or more offices and may be a Director. The Board of Directors may, from time to time, appoint a Vice-President or such other officers, and designate their powers and duties, as the Board finds necessary to manage the affairs of the Association.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages, and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, or the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-President. The Vice-President, if any, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors may prescribe.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or the signature of the President. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is been designated. The Secretary shall have all of the rights and duties of the Vice-President if there is no Vice-President.

5.5 Treasurer. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association making proper vouchers for such disbursements, and shall

render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one has been designated.

5.6 Compensation of Officers. No compensation shall be paid to officers of the Association for their services as officers. This provision does not preclude the Board of Directors from employing officers as employees of the Association.

5.7 Vacancies. If any office becomes vacant, the remaining Directors, by a majority vote, may choose a successor to hold office for the unexpired term.

5.8 Resignation. Any Director or officer may resign his office at any time by an instrument in writing, effective upon receipt by the Board, unless otherwise specified in the resignation.

ARTICLE 6
Fiscal Matters

The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions.

6.1 Depository. All funds of the Association shall be maintained separately in the Association's name. Reserve funds shall be maintained separately and have separate ledgers. No agent, employee, officer, or director of the Association shall commingle any Association funds with his or her funds or with the funds of any other condominium association or community association. The Association shall maintain its accounts in such financial institutions in the State of Florida as are designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investments at its discretion.

6.2 Budget. The Board of Directors shall, at its December meeting each year, adopt an annual budget for common expenses for the next fiscal year. The meeting must be open to the Unit Owners. A copy of the proposed budget of common expenses and a notice stating the time and place of the meeting at which the budget shall be considered shall be mailed or hand delivered to all the Unit Owners at the address last furnished to the Association not less than fourteen days prior to that meeting. Evidence of compliance with this fourteen-day notice must be made by an affidavit executed by an officer of the Association, the manager, or other person providing notice of the meeting and filed among the official records of the Association. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. If the Association maintains limited common elements with the costs 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. The proposed budget shall show for each item for which reserves are maintained the estimated life, estimated replacement cost, estimated remaining useful life, and current balance in each reserve account.

6.3 Reserves for Capital Expenditures and Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by limited proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the Unit Owners as required in Section 6.2 above. Reserves funded under this Section 6.3 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 other purposes is approved in advance by a vote of the majority of the voting interests present (including by limited proxy) at a duly called members' meeting. If reserves are waived and have already been partially collected, any overage paid by Unit Owners shall be subtracted from the next quarterly assessment for the Unit. Prior to turnover of control of the Association to the Unit Owners, the Developer may vote to waive the reserves or reduce the funding of reserves for the first two (2) years of the operation of the Association, after which time reserves may only be waived or reduced upon the vote of a majority of all non-developer voting interests, voting in person or by limited proxy, at a duly called meeting of the Association. If a meeting of the Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

6.4 General Maintenance Reserves. In addition to the statutory reserves provided in Section 6.3 above, the Board may establish one or more additional reserve accounts for general operating expenses, repairs, minor improvements, or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any project within the above-stated purposes.

6.5 Assessments. All regular annual assessments shall be paid in quarterly installments, due and payable, on the first day of January, April, July, and October. Assessments shall be in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. If an annual budget has not been adopted at the time a quarterly installment is due, it shall

be presumed that the amount of such installment is the same as the last quarterly payment, and shall continue at such rate until a budget is adopted and *pro rata* assessments are calculated, at which time any overage or shortage shall be added or subtracted from each Unit's next due quarterly installment.

6.6 Special Assessments. Special assessments may be made by the Board of Directors when necessary to meet unusual, unexpected, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Condominium and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. Notice of such assessments must contain a statement of the purpose for the assessments (see Section 4.9 for additional notice requirements). The funds collected must be spent for the stated purpose, but upon completion of the stated purpose any excess funds may either be returned to the members or applied as a credit toward future assessments.

6.7 Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. 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 bonding.

6.8 Financial Information. After the close of each fiscal year, the Board shall cause financial statements or financial reports to be mailed and delivered as required by law.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by a vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all members.

6.10 Application of Payments. All payments on account by a Unit Owner shall be applied as to interest, delinquencies, costs, and attorneys' fees, other charges, and general or special assessments, in such manner and amounts as the Board of Directors may determine, subject to provisions of the Declaration and Florida law.

6.11 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code.

6.12 Official Records.

The Association shall maintain each of the following items, when applicable, which shall constitute the official records of the Association:

- (a) A copy of the plans, permits, warranties, and other items provided by the developer pursuant to Section 718.301(4), Florida Statutes.
- (b) A photocopy of the recorded Declaration of Condominium and of each amendment to the Declaration.
- (c) A photocopy of the recorded Bylaws of the Association and each amendment to the Bylaws.
- (d) A certified copy of the Articles of Incorporation of the Association and each amendment to the Articles.
- (e) A copy of the current Rules & Regulations of the Association.
- (f) A book or books which contain 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 years.
- (g) A current roster of all Unit Owners and their mailing addresses, Unit identifications, voting certifications, and, if known, telephone numbers and the electronic notice address of all owners who have consented to notice by electronic transmission.
- (h) All current insurance policies of the Association and of the Condominium 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 separate accounting records for the Condominium which the Association operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven years. The accounting records shall include, but are not limited to:
 - (i) Accurate, itemized, and detailed records of all receipts and expenditures;
 - (ii) A current account and a monthly, bi-monthly, 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 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 year from the date of the election, vote, or meeting to which the document relates.

(m) All rental records, when the Association is acting as agent for the rental of a Condominium Unit.

(n) A copy of the current question and answer sheet as described by Section 718.504, Florida Statutes.

(o) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

6.13 Inspections of Official Records. The official records of the Association shall be maintained within the state of Florida. The records of the Association other than those items not accessible to Unit Owners by statute shall be made available to a Unit Owner within five (5) working days after receipt of a written request by the Board or its designee. This 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 Association may charge a reasonable fee for copying.

The official records of the Association are 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 the reasonable expense, if any, of the Association member. The Association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The Association shall maintain an adequate number of copies of the Declaration, Articles of Incorporation, Bylaws, and Rules & Regulations, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in Section 718.504, Florida Statutes, on the Condominium property to ensure their availability to Unit Owners and prospective purchasers, and may charge for its actual costs in preparing and furnishing these documents to those requesting the 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 an Association in connection with the approval of the lease, sale, or other transfer of a Unit; or
- (c) Medical records of Unit Owners.

ARTICLE 7 Rules & Regulations

The Board of Directors may, from time to time, adopt and amend reasonable administrative Rules and Regulations governing the use and maintenance of the common elements and the Units, provided such Rules and Regulations are not in conflict with any of the condominium documents and Florida condominium law. Copies of such Rules and Regulations shall be furnished to each Unit Owner. A tenant is subject to the Rules and Regulations of the Association and violation by a tenant shall also be considered violation by an Owner.

ARTICLE 8 Compliance, Default, & Remedies

In addition to the remedies provided in the Declaration, the following provisions apply concerning any default, breach, or violation.

8.1 Fines. The Board of Directors may levy fines as hereafter provided against Unit Owners who commit violations of the condominium documents or Association Rules and Regulations or whose Unit occupants, licensees, or invitees commit such a violation. No fine shall be imposed until the Unit Owner has been given fourteen (14) days written notice by certified mail which notice shall include:

- (a) a statement of the right of the Owner to a hearing if so requested and the date, time and place the hearing will be held if requested; and
- (b) a statement of the provisions of the Declaration, Bylaws, or Rules & Regulations which have allegedly been violated; and
- (c) a short and plain statement of the matters asserted by the Association.

The hearing must be held before a committee of other Unit Owners, which may include the

Board members. The Unit Owner 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.

If the committee does not agree with the fine, the fine may not be levied. No fine will become a lien against a Unit. No fine may exceed \$100 per violation, plus all actual and reasonable costs incurred by the Association to remedy the violation, if any. A fine may, however, be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, provided that no such fine shall exceed in the aggregate \$1,000, plus all actual and reasonable costs incurred by the Association to remedy the violation, if any.

8.2 Correction of Health and Safety Hazards. Any violations by a Unit or Unit Owner which are deemed by the Board of Directors to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Unit Owner, and payment may be enforced by a lien against said Unit with the same force and effect as if the charge were a part of the Unit's assessments for common expenses.

8.3 Mandatory Non-binding Arbitration. In the event of a dispute which is required to be submitted to mandatory non-binding arbitration pursuant to Section 718. 1255, Florida statute, the parties shall petition for non-binding arbitration prior to filing a lawsuit, under the rules of the Division. An arbitration decision shall be final if a complaint for a trial *de novo* is not timely filed in a court of competent jurisdiction. 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 the dispute. The prevailing party may be awarded the costs of the arbitration, reasonable attorney's fees, or both, in an amount determined in the discretion of the arbitrator. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. 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 attorneys' fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial *de novo* is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial *de novo* shall be awarded reasonable court costs and attorneys' fees. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award. A petition may not be granted unless the time for appeal by the filing of a complaint for trial *de novo* has expired. If a complaint for a trial *de novo* has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

8.4 Availability of Remedies. Each member, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to remedies utilized by the Association, regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a business-like basis, to

collect those monies due it, and to preserve the majority's right to enjoy the Condominium property free from unreasonable restraint and annoyance.

ARTICLE 9

Transfer of Association Control; Developer's Rights

9.1 Members' Rights to Elect Board of Directors. When Owners other than the Developer own fifteen percent (15%) or more of the Units, the Owners other than the Developer shall be entitled to elect no less than one-third (1/3) of the members of the Board of Directors.

Unit Owners other than the Developer are entitled to elect a majority of the members of the Board of Directors upon the first of the following events to occur:

- (a) Three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;
- (b) Three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;
- (c) When all 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 the recording of the Declaration of this Condominium, or at any other time prescribed by law.

9.2 Developer's Right to Designate Members of Board of Directors. Except as provided above, the Developer is entitled to designate at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units.

9.3 Members' Meetings to Elect Directors. Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect one (1) or more Directors, the Association shall call, upon not less than sixty (60) days' notice, a meeting of the Unit Owners to elect the member or members of the Board. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so. All non-developer Unit Owners may vote at the meeting.

9.4 Developer's Rights. So long as the Developer holds Units for sale in the ordinary

course of business, none of the following actions may be taken without approval in writing by the Developer:

- (a) Any amendment to the condominium documents which would adversely affect the Developer's rights; or
- (b) Any action of the Association that would be detrimental to the sales of Units by the Developer. An increase in assessments for common expenses shall not be deemed to be detrimental to the sales of Units.

9.5 Transfer of Association Control. At the time that Unit Owners other than the Developer elect a majority of the Directors of the Association, the Developer shall relinquish control of the Association, and the Unit Owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by the Developer and all items and documents that the Developer is required to deliver or turn over to the Association under Florida law. Provided, however, that the Developer shall have a period of not more than ninety (90) days from the date control is to be relinquished to deliver the financial records of the Association. The Developer may turn over control of the Association to Unit Owners other than the Developer prior to the above mentioned dates, in its sole discretion, by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of the 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 Unit Owners, other than the Developer, refuse or fail to assume control.

ARTICLE 10
Default

10.1 Default. A Unit Owner, regardless of how the Owner's title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the Unit Owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A first mortgagee, its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments to the full extent permitted by Florida law.

10.2 Failure to Pay. Assessments become due and the Unit Owner shall become liable for said assessments on the date set by the Association for payment. Assessments not paid within five (5) days from the date when they are due shall bear interest at the lesser of eighteen percent (18%) or the highest lawful rate from the date due until paid. In addition, there shall be a late charge of the greater of twenty-five dollar (\$25.00) or five percent (5%) of the assessment due, for any

assessments not paid within five (5) days of the date due. Assessments paid on or before five (5) days after the date due shall not bear interest or be subject to a late charge. The Association has a lien on each Condominium Parcel for any unpaid assessments on such Condominium Parcel, with interest, and for reasonable attorneys' fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien and may pursue enforcement of the lien or any other available legal remedy. The lien is effective as of the date of the recording of the Declaration of Condominium for Mariners Palm Harbor Condominium, and shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid assessments in the manner a mortgage of real property is foreclosed, may also bring an action at law to recover a money judgment for the unpaid assessments and may pursue any other available remedy at law without waiving any claim of lien.

10.3 Application of Payments. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney' fees incurred in collection, and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

10.4 Acceleration of Assessments. The Association may accelerate assessments of an Owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

10.5 Association Acquisition. If the Association becomes the Owner of a Unit or a member in the Association by reason of foreclosure, it may sell such Unit and appurtenant membership to another corporation, association, or other entity, which in its judgment would be suitable as a member in the Association, and which could make effective use of the membership and the properties managed by the Association without undue detriment or harm to the other members of the Association. Alternatively, the Association may retain such membership and prorate the cost of maintaining same among the remaining members of the Association. In the event of the legal termination of an individual interest in the Condominium parcel or the occupancy rights thereunder in favor of the Association, the member or any other persons in possession by or through the right of the member, shall promptly quit and surrender the Unit to the Association in good repair, ordinary wear and tear and damage by fire or other casualty excepted, and the Association has the right to

enter said Unit and to possess the Unit. The member, for himself and any successor in interest by operation of law or otherwise, hereby waives any and all notice and demand for possession if such be required by applicable laws.

10.6 Remedies. In the event of violation of the provisions of the Declaration, Articles of Incorporation, or Bylaws, or Rules as the same are or may be hereafter constituted, the Association, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of such documents or may sue for damages, or take such other action, or other legal remedy as it may deem appropriate. If such legal action is brought against the Unit Owner, the losing party shall pay the winning party's reasonable attorneys' fees and court costs.

10.7 Agreement to Provisions. Each Owner of a Unit, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to default, regardless of the availability of other equally adequate legal procedures. It is the intent of all Owners of Units to give the Association a procedure which will enable it at all times to operate on a business-like basis.



Amendments to these Bylaws are proposed and adopted in the following manner:

11.1 Proposed. Amendments to these Bylaws are proposed by a majority of the Board or upon petition by one-half of the Unit Owners by instrument in writing signed by them. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words shall be inserted in the text and underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Bylaw __ for present text." Non-material errors or omissions in the Bylaw amendment process will not invalidate an otherwise properly promulgated amendment.

11.2 Vote. Upon any amendment to these Bylaws being proposed, such proposed amendment shall be submitted to a vote of the members no later than the next annual meeting for which proper notice can be given. Except as otherwise provided by law, or by specific provision of the condominium documents, these Bylaws may be amended by concurrence of two-thirds (2/3) of the voting interests present and voting at any annual or special meeting at which there was a quorum, provided that notice of any proposed amendment has been given to all the members in accordance with Florida law. Amendments may also be adopted without a meeting by obtaining unanimous written consent from all members.

11.3 **Recordation.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

ARTICLE 12

Indemnification

Every officer and Director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees incurred by or imposed on the officer or Director in connection with any legal proceeding in which he may be a party, or in which he may become involved by reason of his being or having been a Director or officer of the Association even if he is not an officer or Director at the time the expenses are incurred. The officer or Director shall not be indemnified if he is guilty of gross negligence or willful misconduct or has breached his fiduciary duty to the members of the Association or committed a criminal act. The Association is not liable, however, for payment of a voluntary settlement unless it is first approved by the Board of Directors. The foregoing rights shall be in addition to and not exclusive of all other rights to which the Director or officer may be entitled.

ARTICLE 13

Miscellaneous

13.1 **Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions shall remain in full force and effect.

13.2 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or the Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation prevail over the provisions of these Bylaws.

13.3 **Certificate of Compliance.** A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of compliance of the Condominium Units to the applicable fire and life safety codes.

13.4 **Common Elements.** The Association is hereby granted a limited power to convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.