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DECLARATION

OF

THE BERKELEY,

A CONDOMINIUM

DECLARATION OF THE BERKELEY, A CONDOMINIUM

6751 N. FEDERAL, LLC, a Florida limited liability company ("Developer") does hereby declare as follows:

1. **Introduction and Submission.**

1.1 **The Land.** The Developer owns the fee title to certain land located in Palm Beach County, Florida, as more particularly described in Exhibit "1" annexed hereto (the "Land").

1.2 **Submission Statement.** The Developer hereby submits the Land and all Improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, to the condominium form of ownership and use pursuant hereto and otherwise in the manner provided by the Florida Condominium Act as it exists on the date hereof.

1.3 **Name.** The name by which this condominium is to be identified is "THE BERKELEY, A CONDOMINIUM" (hereinafter called the "Condominium").

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

2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as hereafter renumbered.

2.2 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Unit Owner.

2.3 "Association" means THE BERKELEY CONDOMINIUM ASSOCIATION OF BOCA RATON, INC., a not for profit Florida corporation, the entity responsible for the operation of the Condominium.

2.4 "Building" means the structure or structures in which the Units are located on the condominium property from time to time.

2.5 "By-Laws" mean the By-Laws of the Association.

2.6 "Common elements" mean and include:

- (a) The portions of the Condominium property which are not included within the Units.

- (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the common elements.
 - (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
 - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.
 - (e) Any other parts of the condominium property designated as common elements in this Declaration.
- 2.7 "Common expenses" mean all expenses and assessments incurred by the Association for the Condominium and the Condominium property and other expenses declared by the Association as common expenses.
- 2.8 "Common surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, above the amount of common expenses.
- 2.9 "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 of the appurtenances to the Unit.
- 2.10 "Condominium property" means the Land and personal property that are subjected to condominium ownership under this Declaration, all Improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium, and all other property, real, personal and mixed, which may subsequently be made subject to the Declaration as hereinafter described.
- 2.11 "County" means the County of Palm Beach, State of Florida.
- 2.12 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.13 "Developer" means 6751 N. Federal LLC, a Florida limited liability company, its successors and such of its assigns as to whom or which the rights of Developer hereunder are specifically assigned.
- 2.14 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the condominium property from time to time, including, but not limited to, the Building.
- 2.15 "Institutional First Mortgagee" means a licensed mortgage lender or assigns, a bank, savings and loan association, insurance company, real estate or mortgage investment

trust, pension fund, an agency of the United States Government, mortgage banker, any affiliate of any of the foregoing, or any other lender generally recognized as an institutional type lender, or the Developer, holding a first mortgage on a Unit or Units.

2.16 "Limited Common Elements" means and includes those common elements which are reserved for the use of the Owner or Owners of certain Units to the exclusion of all Owners of other Units, including assigned parking and storage spaces, if any.

2.17 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns at any time Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.18 "Unit" means a part of the condominium property which is subject to exclusive ownership.

2.19 "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a Condominium parcel.

3. **Description of Condominium.**

3.1 **Identification of Units.** The Land has constructed thereon the Building containing the Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Unit is set forth on Exhibit "3" annexed hereto. Exhibit "3" consists of a survey of the Land, a graphic description of the Improvements located or to be located thereon, including, but not limited to, the Building in which the Units are located and a plot plan thereof. Said Exhibit "3" together with this Declaration, is sufficient in detail to identify the common elements and each Unit and its relative locations and approximate dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the common elements and common surplus; (b) the exclusive right to use such portion of the common elements as may be 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) other appurtenances as may be provided in this Declaration.

3.2 **Unit Boundaries.** Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

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

- (i) **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the structural ceiling of the Unit.
- (ii) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the Unit.
- (iii) **Interior Divisions.** Non-structural interior walls shall not 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 and doors, such boundaries shall be extended to include the interior unfinished surfaces of such aperture, including the frameworks therefor. Exterior surfaces made of glass or other transparent material, and all framings and casing thereof, shall be deemed part of the boundaries of the Unit.

- (d) **Conflicts or Ambiguities.** In the event there is a conflict between the above textual description and the surveys set forth as Exhibit "3" said surveys shall control, except with respect to the matters described in paragraph (c) above if not shown on such surveys.

- 3.3 **Parking Areas.** Except as hereinafter provided, all of the Parking Areas as shown in Exhibit "3" are Common Elements. No Unit shall be entitled to the sole and exclusive use of any parking space unless a space is assigned by the Developer as a Limited Common Element to said Unit. The Association shall enact rules and regulations, which may be amended from time to time, regarding the use of all parking areas by the Unit Owners, their agents, employees, business invitees and guests. So long as the Developer holds Units for sale in the ordinary course of business, the Developer shall have the sole and exclusive right to assign any and all such parking spaces to and for the exclusive use of individual Unit Owners, and to retain the proceeds therefrom. It is intended that all such spaces shall be deemed to be controlled exclusively by the Developer until assigned to the Unit Owners, the Association or until the Developer has sold its last Unit at the Building. Once assigned, such space shall be and become a Limited Common Element for the exclusive use of that Owner, such owner's guests and invitees, and shall not be subject to redesignation by the Association, and shall pass as a Limited Common Element with the sale or transfer of the Unit. A Unit Owner to whom a parking space has been assigned, shall have the right to reassign such parking space to another Unit Owner, and to receive a fee therefor from the assignee Unit Owner, as the two (2) Unit Owners may agree. Parking spaces shall be assigned, if at all, by an unrecordable instrument. The Developer shall have the right to collect and retain for

its own account and use any and all fees, charges and other sums received in connection with the assignment and transfer of any and all such parking spaces. Further, so long as the Developer holds any Unit for sale in the ordinary course of business, the Developer reserves the right to use any and all spaces not otherwise assigned as herein provided for purposes of promotion and sales and marketing of said Condominium Units. The Developer or the Association may construct canopies to cover some or all of the parking spaces. The cost of maintenance or replacement, from time to time, of the canopies, shall be shared equally by each parking space assignee whose parking space is covered by such canopy.

34 **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 Services; Drainage.** Easements are reserved under, through and over the condominium property as may be required for utility and other services and drainage in order to serve the Condominium; provided, however, such easements running through a Unit shall be limited to those provided in the plans and specifications for the Building, or existing in the Building as constructed or reconstructed, unless approved in writing by the affected Unit Owner. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall have a right of access of each Unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits, and other utility, service and 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 such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice and shall be made during normal business hours.

(c) **Encroachments.** If (a) any portion of the common elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the common elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the common elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or of any Unit after damage by fire or casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the common

elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

- (d) **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner, 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 intended and designated for such purpose and use (including, but not limited to: hallways, stairwells, bathrooms and elevators); and for vehicular and pedestrian traffic over, through and across such portions of the common elements as from time to time may be paved and intended for such purposes.

(e) **Construction; Maintenance.** The Developer (including its designees, contractors, successors and assigns) shall have the right, until such time as it turns over the Association to the Unit Owners or until the last Unit is sold, whichever occurs first, in its sole discretion from time to time to enter the condominium property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the condominium property.

- (f) **Developer and Manager Use.** The Developer (regardless of whether it controls Units) and any manager engaged by the Association, their designees, successors and assigns, shall have the right to use any unoccupied Units and all parts of the common elements for model Units and sales offices, to show model Units and common elements to prospective purchasers and tenants of Units, to erect other promotional material, to advertise Units for sale or lease, and to use the common elements (including, without limitation, office space) for their respective administrative and management functions prior and subsequent to the sale of the Units, as appropriate.

- (g) **Additional Easements.** The Developer (so long as it owns any Units) and the Association each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing utility, service or other easements or drainage facilities, in any portion of the common elements of the condominium property, and to grant access easements or relocate any existing access easements in any portion of the common elements of the condominium property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation

of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for business purposes.

4. **Restraint Upon Separation and Partition of Common Elements.** The undivided share in the common elements and common surplus which is appurtenant to a Unit, and, except as provided to the contrary in Section 3 hereof, the exclusive right to use all appropriate appurtenant limited common elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the common elements and common surplus 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, the condominium property, or any part thereof, shall lie except as provided herein.
5. **Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.**
 - 5.1 **Percentage Ownership and Shares.** The percentage interest in the common elements and common surplus, and the percentage share of the common expenses, appurtenant to each Unit is set forth in Exhibit "2" annexed hereto.
 - 5.2 **Voting.** There will be 100 total votes in the Association. Each Unit Owner will be entitled to that number of votes equal to that Unit Owner's percentage interest in the Common Elements as described in Exhibit 2 to the Declaration.
6. **Amendment of the Declaration.** Except as elsewhere provided herein, this Declaration may be amended as follows:
 - 6.1 **By The Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the members of the Association. 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 affirmative vote of:
 - (a) Before or after control of the Board is turned over to Unit Owners other than the Developer, Unit Owners owning not less than 50% of the Units and by not less than 66 2/3% of the Board of Directors of the Association; or
 - (b) Before or after control of the Board is turned over to Unit Owners other than the Developer, 100% of the Board of Directors.

- (c) Before or after control of the Board is turned over to Unit Owners other than the Developer, not less than 50% of the entire membership of the Board of Directors in the case of amendments to the section hereof entitled "Insurance" that are reasonably required by insurers or Institutional First Mortgagees.
- (d) After control of the Board is turned over to Unit Owners other than the Developer, Unit Owners owning not less than 75% of the Units; or

6.2 **By The Developer.** The Developer, during the time the Developer is in control of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would adversely effect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing. The execution and recording of any amendment by the Developer hereto shall be conclusive evidence that the amendment does not materially adversely effect substantial property rights of Unit Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded.

6.3 **Execution and Recording.** An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed in the form required for the execution of a deed. Amendments by the Developer must be evidenced in writing but a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the public records of the County.

6.4 **Proviso.** Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit that has already been sold by the Developer in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the common expenses and owns the common elements and common surplus, unless the record Owner(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment. No amendment may be adopted which would adversely affect the interest of the Developer or any Institutional First Mortgagee without the written consent of the Developer or such Institutional First Mortgagee(s), as appropriate.

7. **Maintenance and Repairs.**

7.1 **Units.** All maintenance, repairs and replacements of, in or to any Unit (except for exterior windows which shall be repaired, replaced and maintained by the Association) and limited common elements appurtenant thereto (except for assigned parking spaces), whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of glass, the

interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical, plumbing, heating and air conditioning fixtures, if any, within the Unit or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

7.2 **Common Elements.** Except to the extent proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the common elements (other than certain limited common elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a common expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.

8. **Additions, Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors, the common elements, or any of them, shall require capital additions, alterations, or improvements (as distinguished from repairs and replacements) costing in excess of \$25,000 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by (i) a majority of the Unit Owners voting at a meeting at which a quorum is attained, and (ii) the Primary Institutional First Mortgagee. Any such additions, alterations or improvements to such common elements, or any of them, costing in the aggregate \$25,000 or less in a calendar year may be made by the Association without approval of the Unit Owners or any Institutional First Mortgagee. 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.

9. **Additions, Alterations or Improvements by Unit Owners.**

9.1 **Consent of the Board of Directors.** No Unit Owner shall make any structural addition, alteration or improvement in or to their Unit, or any alteration to limited common elements, 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 Unit 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 to the proposed addition, alteration or improvement. All such 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 the requirements imposed by the Association in its approval. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless from any liability and expenses arising therefrom.

9.2 **Additions, alterations or improvements by Developer.** The foregoing restrictions of this Section 9 shall not apply to Developer 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 controlled or owned by it and all common elements (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements) except that no such amendments shall alter the number or size of the Units.

9.3 **Cooperation Agreement.** Each Unit Owner shall reasonably cooperate with the Developer and with other Unit Owners to permit access to such Unit Owner's unit that may reasonably become necessary in connection with the Developer's or another Unit Owner's repair, replacement, installation or improvement of the Developer's or such other Unit Owner's plumbing, electrical, cable, mechanical or other systems.

- (a) The Unit Owner (or the Developer) making such repair, installation, replacement or improvement shall provide reasonable notice, shall take reasonable precautions against damage, and shall pay for the full and complete cost of repair or replacement (to its original condition) of any damage caused.
- (b) All of such work must be scheduled in such a manner as to cause the minimal amount of interference to the business operations and the minimal amount of exposure to damage.
- (c) All of such work must be performed by qualified persons, who are highly skilled and licensed in the field for which such work is to be performed.

10. **Changes in Developer-Owned Units.** Without limiting the generality of Section 9.2 above, Developer shall have the right, without the vote or consent of the Association, to (i) make alterations, additions, or improvements in, to and upon Units controlled by Developer, whether structural or non-structural, ordinary or extraordinary; and (ii) change the layout or number of rooms in any Developer-controlled Units; provided, however, that the percentage interests in the common elements of any Units (other than Developer-controlled Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter common elements adjacent to such Units, create additional common elements and/or incorporate portions of common elements in Units, provided that such relocation and alteration does not materially negatively affect the value of the Units of Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this Paragraph 10 may be effectuated by the Developer alone. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer. No changes in Developer-owned Units may be made

which are in violation of the Developer's obligations as created by Florida Statutes Chapter 718.

11. **Operation of the Condominium by the Association; 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 By-Laws and Articles of Incorporation of the Association (respectively, Exhibits "4" and "5" annexed hereto) as amended from time to time. In the event of conflict between the powers and duties of the Association as set forth in the Declaration, Articles of Incorporation and By-Laws, the Declaration shall take precedence over the Articles of Incorporation and By-Laws, and the Articles of Incorporation shall take precedence over the By-Laws. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, and all the powers of a Florida corporation not for profit, including, without limitation:

- (a) The irrevocable right to have reasonable access to each Unit from time to time during reasonable hours with reasonable notice as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time.
- (b) The power to make and collect assessments and other charges against Unit Owners and to lease, maintain, repair and replace 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 reasonable times.
- (d) The power to contract for the management and maintenance of the Condominium property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the common elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the condominium documents and the Act, including, but not limited to, the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (e) Subsequent to the recording of this Declaration, the Association, when authorized by the majority of the total votes of the members of the Association and approved by the Primary Institutional First Mortgagee, shall

have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, licenses, memberships, beneficial interests and other possessory, use or other interests in lands or facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the use or benefit of the Unit Owners on an exclusive or non-exclusive basis. The expense of ownership, rental, membership fees, operations, replacements, and other undertakings in connection therewith shall be common expenses.

(f) The Developer plans to enter into a license or similar agreement with the City of Boca Raton to improve and maintain Berkeley Street from North Federal Highway west for one (1) block, for the non-exclusive benefit of all of the Unit Owners. If such license agreement is entered into, the expense thereof, including but not limited to the expense of maintenance of the street, sidewalks, lights and landscaping shall be common expenses.

(g) The power to adopt and amend rules and regulations covering the details of the operation and use of the condominium property.

- 11.1 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the property.
- 11.2 **Restraint upon assignment of shares in assets.** The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 11.3 **Approval or disapproval of matters.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration.
- 11.4 **Action of Association; Interpretation.** Unless otherwise specifically provided to the contrary herein or in any of the exhibits attached hereto, the Association shall act through its officers in accordance with the decisions of the Board of Directors. Unit Owners shall not have any power or authority to approve or disapprove actions unless otherwise specifically required hereunder or under any of the exhibits attached hereto. Officers need not have specific Board authority for actions taken by such officers in the ordinary course of business. The Board shall be responsible for any interpretation adopted of this Declaration and its exhibits and an opinion of counsel stating that an interpretation adopted by the Board is not unreasonable shall establish the validity of such interpretation.

12. **Determination of Common Expenses and Fixing of Assessments Therefor.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of assessments payable by the Unit Owners to meet the common expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the assessment payable by each of them as determined by the Board of Directors as aforesaid 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 the operation, maintenance, repair and replacement of the common elements, costs of carrying out the powers and duties of the Association and any other expenses designated as common expenses by the Act, this Declaration, the Articles or By-Laws of the Association or by the Association. The budget shall include reserves as required by the Act. Working capital contributions may be used as the Board shall determine from time to time for any expenses allowed under the Act.

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 By-Laws. Anything to the contrary herein notwithstanding, the Association shall have the power to specially charge and assess one or more Unit Owners (without being obligated to similarly charge and assess all other Unit Owners) for expenses incurred by the Association solely for the benefit of, or as a result of actions or omissions of, such Owner or Owners as the Board deems appropriate from time to time. Once imposed, such special charges and assessments shall be deemed to be assessments for common expenses in respect of such Unit or Units only for purposes of this Declaration, the Exhibits attached hereto and the Act.

13. **Collection of Assessments.**

- 13.1 **Liability for assessment.** (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 such person is the Unit Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for any unpaid 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 for common expenses.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the due date until paid. The Association has a lien on each condominium parcel for any unpaid assessments on such parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after recording 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 amount due and the due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law. The claim of lien includes only assessments which are due when the claim is recorded. 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. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

13.3 **Notice of intention to foreclose lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection shall be deemed satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

13.4 **Appointment of receiver to collect rental.** During the pendency of any foreclosure action, 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 a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

13.5 **Institutional First Mortgagee.** In the event an Institutional First Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns shall only be liable for the share of common expenses or assessments or other charges by the Association pertaining to such condominium parcel to the extent of assessments which accrued or came due during six (6) months immediately preceding the acquisition of title by the Institutional First Mortgagee (not otherwise collected by the Association) or one (1%) percent of the original mortgage debt, whichever is less. Any otherwise unpaid common expenses or assessments or other charges shall be deemed to be common expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

13.6 **Developer's liability for assessments.** The Developer shall pay all assessments on its Units when such assessments become due and payable, according to any elections available to the Developer pursuant to the Act.

13.7 **Possession of Unit.** Any person who acquires an interest in a Unit, except Institutional First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including, without limitation, persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the common elements until such time as all unpaid assessments and other charges due and owing by the former Owner, if any, have been paid.

13.8 **Certificate of unpaid assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit.

14. **Insurance.** Insurance covering the Condominium shall be governed by the following provisions:

14.1 **Purchase, custody and payment of policies.**

- (a) **Purchase.** All insurance policies covering the condominium property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) **Approval.** Each insurance policy, the agency and company issuing the policy, and the Insurance Trustee (if appointed) hereinafter designated shall be subject to the approval of the Primary Institutional First Mortgagee, if required by said entity.
- (c) **Named insured.** The named insured shall be the Association individually and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them.
- (d) **Custody of policies and payment of proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee.
- (e) **Copies to Mortgagees.** If requested by a Mortgagee, one copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association to each Institutional First Mortgagee included in the mortgagee roster who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy or ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, whichever date shall first occur.
- (f) **Personal property and liability.** Unit Owners may obtain insurance coverage at their own expense and at their own discretion upon their personal property and for their personal liability and business expense.

14.2 **Coverage.** The Association shall maintain insurance covering the following:

- (a) **Casualty.** The Building (including all of the exterior windows and all of the Units and the fixtures, installations or additions lying within the boundaries of the Units initially installed by the Developer and common elements therein, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners or tenants of Unit Owners) and Improvements on the common elements from time to time, together with all service machinery contained therein, shall be insured in an amount not less than 100% of the replacement value thereof, excluding foundation and excavation costs, but the policy may contain reasonable deductible limits, all as determined from time to time by the Board of Directors of the Association. Such coverage shall afford protection against:
- (i) **Loss or damage by fire** and other hazards covered by a standard extended coverage endorsement; and
 - (ii) **Such other risks** as from time to time are customarily covered with respect to buildings similar in construction, location and use, including, but not limited to, flood, windstorm, vandalism and malicious mischief.
- (b) **Liability.** Comprehensive general public liability covering loss or damage resulting from accidents or occurrences on or about or in connection with the condominium property or any work, matters or things related to the condominium property or this Declaration and its exhibits, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence.
- (c) **Workmen's compensation** and other mandatory insurance when applicable.
- (d) **Machinery insurance.**
- (e) **Plate glass insurance.**
- (f) **Flood and windstorm insurance,** if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (g) **Fidelity insurance** covering all directors, officers and employees of the Association and managing agents who handle Association funds.
- (h) **Such other insurance** as the Board of Directors of the Association shall determine from time to time to be desirable.

- (i) When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more Unit Owners.

14.3 **Additional provisions.** All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of Units. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the Building and the insured Improvements on the common elements (exclusive of foundations), including all of the Units and all of the common elements therein, without deduction for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant to this Section.

14.4 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or their appurtenances or of the common elements by particular Unit Owners shall be assessed against and paid by such Owners.

14.5 **Insurance Trustee's share of proceeds.** All insurance policies obtained by the Association shall be for the benefit of the Association, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, which may be designated by the Board of Directors and which shall be any bank, or trust company in Florida with trust powers, conducting business in the County. The insurance Trustee (if appointed) shall not be liable for payment of premiums, nor for the renewal or sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

- (a) **Common elements.** Proceeds on account of damage to the common elements shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the common elements appurtenant to each Unit.
- (b) **Units.** Proceeds on account of damage to Units shall be held in the following undivided shares:

- (i) **When the Building is to be restored** - for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
- (ii) **When the Building is not to be restored** an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.

(c) **Mortgagees**. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

14.6 **Distribution of proceeds**. Proceeds of insurance policies received by the Insurance Trustee (if appointed) shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (a) **Expense of the insurance trust**. All expenses of the Insurance Trustee shall be first paid or provision made therefor.
- (b) **Reconstruction or repair**. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.
- (c) **Failure to reconstruct or repair**. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by them.
- (d) **Certificate**. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

14.7 **Association as agent**. The Association is hereby irrevocably appointed agent for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the condominium property to adjust all claims

arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

- 14.8 **Unit Owners' personal coverage.** The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Condominium Unit nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner if such Owner so desires to purchase and pay for insurance as to all such and other risks.

- 14.9 **Benefit of mortgagees.** Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Condominium Units and may be enforced by such mortgagees.

15. **Reconstruction or Repair After Fire or Other Casualty.**

- 15.1 **Determination to reconstruct or repair.** In the event of damage to or destruction of the Building and Improvements as a result of fire or other casualty (unless 75% or more of the Building is destroyed or substantially damaged and Unit Owners owning 75% or more of the Units and interests in the common elements elect not to proceed with repairs or restoration and the Primary Institutional First Mortgagee approves such election), the Board of Directors shall arrange for the prompt repair and restoration of the Building (including all common elements in any damaged Units, but not including furniture, furnishings, or other personal property supplied or installed by any Unit Owner or a tenant of a Unit Owner), and the proceeds of all insurance policies shall be disbursed to the contractors engaged in such repair and restoration in appropriate progress payments. If 75% or more of the Building is substantially damaged or destroyed and if Unit Owners owning 75% of all Units and interests in the common elements duly and promptly resolve not to proceed with the repair or restoration thereof and the Primary Institutional First Mortgagee approves such resolution, the condominium property will not be repaired and shall be subject to an action for partition instituted by any Unit Owner, mortgagee or lienor, as if the Condominium property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the common elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens. Whenever in this Section the words "promptly repair" are used, it shall mean repairs are to begin not more than sixty (60) days from the date the proceeds of insurance are received by or on behalf of the Association on account of such damage or destruction sufficient to pay the estimated cost of such work and not more than ninety (90) days after the Board of Directors determines that such proceeds of insurance are insufficient to pay said estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 15.2 **Plans and specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association.
- 15.3 **Special Responsibility.** If the damage is only to those parts of one or more Units for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.
- 15.4 **Estimate of costs.** Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.
- 15.5 **Assessments.** If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments on account of damage to common elements shall be in proportion to the Owner's share in the common elements, and on account of damage to Units alone, in proportion to the cost of repairing the damage suffered by each Unit Owner as determined by the Association (without regard to improvements which may have been made to certain Units by the Unit Owners thereof).
- 15.6 **Construction funds.** The funds for payment of the costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee (if appointed) and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:
- (a) **Association.** If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$100,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.
 - (b) **Insurance Trustee.** The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed

in payment of the costs of reconstruction and repair in the following manner and order:

- (i) **Association - lesser damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$100,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
- (ii) **Association - major damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$100,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) **Unit Owner.** If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the Association, this balance may be used by the Association to effect repairs to Units or may be distributed to Owners of damaged Units who have the responsibility for reconstruction and repair of their Units. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage in each damaged Unit bears to the total of such estimated costs in all damaged Units as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs for his Unit. All proceeds must be used to effect repairs to Units. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly.
- (iv) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

- (v) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners, nor to determine the payees nor the amounts to be paid. Instead, the Insurance Trustee may rely upon a certificate of the Association, made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

15.7 **Insurance Trustee.** Anything to the contrary in this Declaration notwithstanding, the appointment of an insurance trustee is optional on the part of the Association. If no such trustee is appointed, the Association shall undertake directly all responsibilities of the Insurance Trustee provided for in this Declaration.

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

16. **Condemnation.**

16.1 **Deposit of Awards with Insurance Trustee.** The taking of portions of the condominium property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association a special assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

16.2 **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

16.3 **Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided for insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and

the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty.

- 16.4 **Unit Reduced but useable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made useable for the purpose for which it was intended, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium.

(a) **Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(b) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

(c) **Adjustment of Shares in Common Elements.** If the floor area of the Unit is reduced by the taking, the percentage representing the share in the common elements and of the common expenses appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the common elements shall be restated as percentages of the total of the new shares as reduced by the taking.

- 16.5 **Unit Made Unuseable.** If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made useable for the purpose for which it was intended, the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(a) **Payment of Award.** The award shall be paid first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages due from those Units which are not habitable, second to the Association for any due and unpaid assessments; third jointly to the Unit Owners and mortgagees of Units in an amount not to exceed the market value of the Unit immediately prior to the taking (with credit being given for payments previously reserved for Institutional First Mortgagees); and the balance, if any, to repairing and replacing the common elements.

(b) **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the common elements and shall be placed in a condition for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association, if possible; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work

shall be approved in the manner elsewhere required for further improvement of the common elements and as provided in subparagraph (d) below.

- (c) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the Units that continue as part of the condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the common elements as follows:

- (i) Add the total percentages of all Units of continuing Owners prior to the adjustment, but after adjustments made in accordance with this Section 16.5(c) hereof (the Percentage Balance)
- (ii) Divide said percentage of each Unit of all continuing Owners by the Percentage Balance.

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

- (d) **Assessments.** If the balance of the award (after payments to the Unit Owner and such Owner's mortgagee as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the common elements, the additional funds required for such purposes shall be raised by assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The assessments shall be made in proportion to the shares of those Owners in the common elements after the changes effected by the taking.

- (e) **Arbitration.** If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice by any party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance or otherwise upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners in proportion to the shares of the Owners in the common elements as they exist prior to the changes effected by the taking.

- 16.6 **Taking of Common Elements.** Awards for the taking of common elements shall be used to make the remaining portion of the common elements useable in the manner approved by the Board of Directors of the Association; provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the

work shall be approved in the manner elsewhere required for further improvement of the common elements. The balance of the awards for the taking of common elements, if any, shall be distributed to the Unit Owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If there is a mortgage of a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

- 16.7 **Amendment of Declaration**. The changes in Units, in the common elements and in the ownership of the common elements that are effected by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association.
17. **Occupancy and Use Restrictions**. In order to provide for congenial occupancy of the condominium property and for the protection of the values of the Units, the use of the condominium property shall be restricted to and shall be in accordance with the following provisions:
- 17.1 **Occupancy**. Each Unit shall be used as a commercial or professional place of business. The original business which may be operated in the Unit shall be approved by the Developer. Any subsequent changes in the use of the Unit shall be subject to the reasonable approval of the Board of Directors of the Association. The provisions of this subdivision 17.1 shall not be applicable to Units used by the Developer for model units, sales offices, commercial businesses or management services.
- 17.2 **Exterior Alterations**. No Unit Owner shall cause or allow improvements or changes to the exterior of a Unit, limited common elements appurtenant thereto or the Building, including, but not limited to, painting or other decoration of any aesthetic nature, the installation of electrical wiring, television antenna, machines or air conditioning units which may protrude through the walls or roof of the building or in any manner change the appearance of any portion of the Building, without obtaining the prior written consent of the Association.
- 17.3 **Use of Common Elements**. The common elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 17.4 **Nuisances**. No nuisances (as defined by the Association from time to time) shall be allowed on the condominium property, nor shall any use or practice be allowed which is a source of annoyance to occupants or which interferes with the peaceful possession or proper use of the condominium property by occupants.
- 17.5 **No improper uses**. No immoral, improper, offensive, hazardous or unlawful use shall be made of the condominium property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover, and of the Association, shall be observed. Violations of laws, orders, rules, regulations or requirements relating to any portion of the condominium

property (including, but not limited to, applicable weight restrictions), shall be complied with by, and at the sole expense of, the party obligated to maintain or repair such portion of the condominium property, as elsewhere herein set forth.

- 17.6 **Leasing.** Any portion of a Unit may be rented to a person, entity, or business, who would otherwise be qualified to be a Unit Owner, without the written permission of the Board. All leases or subleases to any person, entity, or business who would otherwise not be qualified to be a Unit Owner, shall be subject to approval of the Association, which, to the extent lawful, may reject any such proposed lease for any reasonable reason. However, the Developer may lease any Unit that it owns to a third party without Association Approval. Leases of Units shall be made on forms that the Board may require, from time to time or, the Board may require that all leases contain certain clauses. The Association shall have the right to terminate any lease in the event a tenant violates any applicable provision hereof or of any of the exhibits hereto. All leases are hereby made subordinate to any claim of lien of the Association for unpaid assessments regardless of when such lien is filed. The Unit Owner shall be jointly and severally liable to the Association along with the tenant for any damages caused by the tenant.
- 17.7 **Exterior improvements.** No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies (if any) or windows of the Building (including awnings, flooring, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.
- 17.8 **No Time Share Estates.** No Unit may be divided into any time share estate or estates (as defined by the Act) or similar interval or periodic ownership plan.
- 17.9 **Weight and Sound Restrictions.** No heavy object may be placed anywhere in the Unit or on any of the common elements (including, but not limited to, the limited common elements) without the prior written approval of the Association; which approval may be denied for any reasonable reason. Without limiting the generality of the foregoing, ceramic tile or other heavy and/or hard floor surfacing may not be installed without the prior written approval of the Association and must be sound attenuated. Persons violating this restriction shall be held strictly liable for all resulting damages. Violations will also void applicable Developer warranties.
- 17.10 **Employee Restrictions.** No Unit Owner shall allow their Unit or Combined Units to be occupied, at any given time, by more than five (5) persons per every one-thousand (1,000) useable square feet of space owned or occupied by said Unit Owner. The purpose of this restriction is to prevent a "boiler operation" type of business from being conducted in the Building. For example, if a Unit or combined Units constituting one business suite consists of twelve hundred (1,200) useable square feet, a maximum of six (6) people may work in said business suite at any one

(1) time. This restriction does not prohibit visitors or clients from entering upon a Unit at any time.

17.11 **Common Ownership of Entire Floor.** In the event that a single person or entity owns all of the Units on a floor of the Condominium (for example the entire fourth floor) said person or entity or their successors or assigns shall have the temporary exclusive right to use the Common Elements on said floor while such persons or entity enjoys such ownership. At such time as the person or entity sells one or more of the Units constituting only a portion of said floor, said person or entity must restore, at their own cost and expense, all Common Elements as reflected in Exhibit 3 to the Declaration.

17.12 **Non smoking.** The Building is designated as a non-smoking Building, and there shall not be any smoking inside the Building. The Association may designate certain areas of the exterior Common Elements where individuals may smoke, as well as provide for fines for the violation of this restriction.

17.13 **Parking Regulations.** The Association may designate and enact rules and regulations governing the parking of vehicles on the common elements. These rules may include, but shall not be limited to the number of vehicles that may be parked on the common elements at any one time by the employees, officers or independent contractors of a Unit Owner based on the size of the Unit.

17.14 **Applicability.** The foregoing restrictions shall not apply to the Developer nor to Units owned by it or its affiliates. The Association is also empowered, from time to time, to exempt other Owners or Units from certain specific restrictions, for good cause shown.

18. **Selling, Leasing 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 **Right of first refusal.** Subject to the provisions of paragraph 17.6 above, any Unit Owner who receives a bona fide offer to purchase or lease his Unit (such offer to purchase or lease a Unit, as the case may be, is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept shall give notice by certified mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require. The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell his Unit or to lease his Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information

with respect thereto as the Board of Directors may reasonably have requested. Not later than ten (10) days after receipt of such notice together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner, before the expiration of said ten (10) day period, by certified mail, to purchase such Unit or to lease such Unit, as the case may be, upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

- (a) In the event the Association shall timely elect to purchase such Unit or to lease such Unit, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within 45 days after the giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offer to purchase said Unit, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner, if such Unit is to be sold, shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Real estate taxes, mortgage interest if any and common expenses shall be apportioned between the Offeree Unit Owner and the Association, or its designee, as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board of Directors or to its designee a lease between the Offeree Unit Owner, as landlord, and the Association, or its designee, as tenant, covering such Unit, for the rental and term contained in such Outside Offer.
- (b) In the event the Association or its designee shall fail to accept such offer within ten (10) days after receipt of notice as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer within sixty (60) days after (i) notice of refusal is sent, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such sixty-day period, accept in writing the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such sixty-day period but such sale or lease, as the case may be, shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit or to lease such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all the terms and provisions of this Section.
- (c) Any deed to an Outside Offeror shall provide that the acceptance thereof by the grantee shall be deemed to constitute an assumption of the provisions of

the Declaration, the By—Laws and the Rules and Regulations, as the same may be amended from time to time.

- (d) Any lease executed in connection with the acceptance of any Outside Offer to lease a Unit shall be consistent herewith and with the By—Laws and rules and regulations and shall provide that (i) it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Directors, (ii) the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Board of Directors, and (iii) the Board of Directors shall have the power, but shall not be obligated, to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (a) a default by the tenant in the performance of its obligations under such lease, or (b) a foreclosure of the lien granted under the Act.
- (e) Except as hereinbefore set forth, the form of any such lease executed by the Association or an Outside Offeror shall contain such other provisions as shall be approved in writing by the Board of Directors. Any lease executed by the Association as tenant shall provide that the Association may enter into a sublease of the premises without the consent of the landlord.
- (f) Unless subsequently approved by the Association, in writing, any purported sale or lease of a Unit in violation of this Section shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported tenant or Owner. Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.
- (g) The foregoing restrictions on leasing shall be in addition to the restrictions set forth in Section 17.6 hereof. Anything to the contrary herein notwithstanding, to the extent lawful and as set forth in Section 17.6, if a lease is rejected, the Association shall not be obligated to lease the Unit from the Offeree Unit Owner pursuant hereto. The provisions of this Section 18.1 respecting leases shall only apply if the lease is not rejected first under Section 17.6.

18.2 **Consent of Unit Owners to purchase or lease of Units by the Association.** The Association shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Owners of 75% of the Units (excluding the Offeree Unit Owner) present in person or by proxy and voting at a meeting (duly called for such purpose) at which a quorum is present.

18.3 **No severance of ownership.** No part of the undivided interest in the common elements appurtenant to any Unit may be sold, conveyed or otherwise disposed of, except as part of 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.

- 18.4 **Release by the Association of right of first refusal.** The right of first refusal contained in Section 18.1 may be released or waived by the Association only in the manner provided in Section 18.5. In the event the Association shall release or waive its right of first refusal as to any Unit, such Unit may be sold, conveyed or leased, free and clear of the provisions of said Section 18.1.

- 18.5 **Certificate of termination of right of first refusal.** A certificate executed and acknowledged by an officer of the Association stating that the provisions of Section 18.1 have been met by a Unit Owner or stating that the right of first refusal contained therein has been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated, or approving the specific sale or lease, shall be conclusive upon the Association and the Unit Owners in favor of all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of such Section have, in fact, terminated. No fee shall be charged by the Association in connection with the furnishing of such certificate in excess of the expenditures reasonably required for same, and this expense shall not exceed the maximum amount allowed under the Act, as amended from time to time. No charge shall be made in connection with an extension or renewal of a lease.

- 18.6 **Financing of purchase of Units by the Association.** The purchase of any Unit by the Association shall be on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the common expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the condominium property other than the Unit to be purchased.

- 18.7 **Exceptions.** The provisions of Section 18.1 shall not apply with respect to any lease, sublease, sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or to any one or more of them; (b) the Developer; (c) the Association; (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure; (e) the acquisition or succession to the going business, practice or profession that the Owner was conducting at the Condominium, the acquisition of all of the assets of the Owner, or the merger or consolidation into or with the Owner, by any person, partnership, corporation or other common business entity to continue the operations of the business or profession that the Owner was conducting at the Condominium; (f) the sale, lease or sublease from an Owner to an entity in which the Owner is a principal owner thereof, from an entity to the entity owners thereof; from partners who are Owners to newly admitted partners (or owners) in the continuing entity; from one co-Owner to another; or (g)

an Institutional First Mortgagee (or its assigns) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.

- 18.8 **Gifts and Devises, etc.** Any Unit Owner shall be free to convey or transfer their Unit by gift, to devise their Unit by will, or to have their Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and the Unit subject to, the provisions of this Section 18.

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

19. **Compliance and Default.** Each Unit Owner and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association and Unit Owners shall be entitled to the following relief in addition to the remedies provided by the Act and By-Laws:

- 19.1 **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of such Unit Owner's staff or their guests, employees, agents, invitees, licensees or lessees, but only to the extent such expense is not met by the proceeds of insurance collected by the Association.

- 19.2 **Default.** In the event a Unit Owner fails to maintain their Unit in the manner herein required, or otherwise fails to observe the requirements of this Declaration and its Exhibits or the Act, the Association or any Unit Owner shall have the right to proceed in a court of equity to seek compliance, and the Association may take any other action including, but not limited to, imposing fines, as provided in this Declaration, any of the exhibits attached hereto, the Act or otherwise by law. The Association shall also have the right to assess the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit in compliance herewith, and to collect such assessment and have a lien therefore as elsewhere herein provided. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform any necessary work to enforce compliance with the above provisions and, as provided above, to charge the Unit Owner with the cost thereof by way of assessment or otherwise.

- 19.3 **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, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees) as may be awarded by the court.

- 19.4 **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, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their rights to do so thereafter.
20. **Termination of condominium.** The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the condominium property from the provisions of the Act is authorized by a vote of Owners owning at least 75% of the common elements, and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the condominium property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the common elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its president and secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County. This section may not be amended without the consent of all Institutional First Mortgagees and the Developer so long as it owns any Unit.
21. **Additional Rights of Institutional First Mortgagees.** In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right to:
- 21.1 Examine the Association's books;
 - 21.2 Receive notice of Association meetings and attend such meetings;
 - 21.3 Receive notice of an alleged default by any Unit Owner for which such Mortgagee holds a mortgage which is not cured within thirty (30) days of notice to such Unit Owner; and
 - 21.4 Receive notice of any substantial damage or loss to any portion of the Condominium Property.
22. **Covenant Running With the Land.** All provisions of this Declaration, the Articles, By-Laws and rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual (although subject to amendment from time to time) and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public or third parties (unless expressly provided

to the contrary herein). All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Articles, By-Laws and rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and rules and regulations of the Association and any applicable management contract (whether or not recorded), by such Unit Owner, tenant or occupant.

23. **Additional Provisions.**

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

23.2 **Exhibits.** There is hereby incorporated in this Declaration any materials contained in the exhibits annexed hereto which under the Act are required to be part of the Declaration.

23.3 **Signature of President and Secretary.** Wherever the signature of the president of the Association is required hereunder, the signature of a vice—president may be substituted therefor, and wherever the signature of the secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor.

23.4 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

23.5 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or the rules and regulations adopted

23.5 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

23.6 **Waiver.** No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

23.7 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of this Declaration, the Articles and By-Laws of the Association, applicable rules and regulations and applicable management contracts are fair and reasonable in all material respects.

23.8 **Gender Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

23.9 **Captions.** The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular section or any provision thereof.

IN WITNESS WHEREOF the Developer has caused this Declaration to be duly executed this 13 day of OCTOBER, 2005

Signed, sealed and delivered
in the presence of:

Karin Davis
Karin Davis
Louise G. Smith
Louise G. Smith

6751 N. FEDERAL LLC, a Florida
limited liability company

By: [Signature]
Donald C. Sider, Manager

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13 day of OCTOBER, 2005, by Donald C. Sider, Manager of 6751 N. Federal LLC, a Florida limited liability company, who executed same on behalf of the company and who:

(9) personally known to me
() produced _____ as photo identification

Patricia Dyanne Clifton
Notary Public

My commission expires:



Patricia Dyanne Clifton
Commission # DD450845
Expires July 26, 2009
Bonded Troy Pain - Insurance, Inc. 800-385-7019

JOINDER AND CONSENT

The undersigned, being the owner and holder of a mortgage encumbering the property described in the foregoing Declaration of The Berkeley, a Condominium (the "Declaration") by virtue of the following:

Mortgage, Security Agreement and Fixture Financing Statement dated December 10, 2004 and recorded on December 10, 2004 in Official Records Book 17875, Page 1193, of the Public Records of Palm Beach County, Florida, same having been recorded prior to the recordation of the foregoing Declaration

hereby consents to and joins in the execution of the foregoing Declaration.

Dated this 6th day of OCTOBER, 2005.

Witnesses:

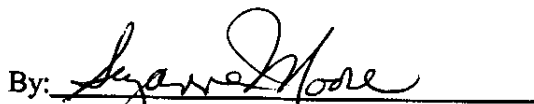


Print Name: Kikki J. Moorman



Print Name: RONALD BLUMSTEIN

MERCANTILE BANK (successor in interest by merger to Pointe Bank), a Florida banking corporation

By: 


Suzanne Moore

Its: Vice President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6th day of October, 2005, by Suzanne Moore, the Vice President of MERCANTILE BANK (successor in interest by merger to Pointe Bank), a Florida banking corporation, on behalf of the corporation. She is ☒ personally known to me or ☐ has produced a Florida driver's license as identification.


Notary Public, State of Florida

My Commission Expires:

My Commission Number:

My Notary Seal:



Carla Vieira
Commission #DD311237
Expires: Apr 19, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

J:\7\CLIENTS\MERCANTILE\6751 N. FEDERAL, LLC\JOINDER AND CONSENT.wpd

EXHIBIT 1

LEGAL DESCRIPTION

Lots 10, 11, 12 13, and the West 38 feet of Lot 14, Block A, DELRAY MANOR, according to the map or plat thereof, as recorded in Plat Book 10, Page 25, Public Records of Palm Beach County, Florida, together with the abandoned Appleby Street Right-of-Way lying North of and adjacent thereto described in Official Records Book 2948, Page 1083, LESS the portion of the West 38 feet of Lot 14 deeded to the City of Boca Raton in that certain deed recorded in Official Records Book 2948, Page 1091, Public Records of Palm Beach County, Florida.

EXHIBIT 2

PERCENTAGE OF COMMON ELEMENTS

UNIT	PERCENTAGE
100	6.8%
101	6.86%
102	5.97%
103	3.94%
200	10.01%
201	6.33%
202	5.21%
203	3.88%
300	7.68%
301	6.04%
302	6.51%
303	5.27%
400	7.68%
401	6.04%
402	6.51%
403	5.27%
TOTAL	100.00%

THE BERKELEY - A CONDOMINIUM

(A PORTION OF BLOCK "A", DELRAY MANORS - P.B. 10, PG. 25, P.B.C.R.)

SURVEY AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

4 STORY OFFICE BUILDING

SURVEYOR'S REPORT:

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was provided by the Client.
4. No underground improvements were located.
5. Elevations shown hereon are in feet and based on the National Geodetic Vertical Datum of 1929.
6. Benchmark Description: The City of Boca Raton Benchmark No. 874, Elevation = 8.971 feet.
7. The entire property described hereon lies within Flood Zone C, Community Panel No. 120195 0002 C, dated 09/19/84.
8. Abbreviation Legend: C = Calculated; CL = Centerline; C.B.S. = Concrete, Block & Stucco; Δ = Central Angle; C.M. = Concrete Monument; CONC. = Concrete; EL. = Elevation; ESMT. = Easement; FD. = Found; F.F. = Finished Floor; F.P.L. = Florida Power & Light Company; ID. = Identification; I.P. = Iron Pipe; I.R. = Iron Rod; L = Arc Length; L.B. = Licensed Business; M = Measured; N/D = Nail & Disk; N.G.V.D. = National Geodetic Vertical Datum; O.R.B. = Official Records Book; OW = Overhead Wires; P.B. = Plat Book; P.B.C.R. = Palm Beach County Records; PG. = Page; P.L.S. = Professional Land Surveyor; R = Radius; R/W = Right-of-Way; S.F. = Square Feet; S.R. = State Road; U.E. = Utility Easement; W/CAP = With Surveyors Cap.

LAND DESCRIPTION:

Lots 10, 11, 12, 13 and the west 38 feet of Lot 14, Block A, DELRAY MANORS, according to the map or plat thereof, recorded in Plat Book 10, Page 25 of the Public Records of Palm Beach County, Florida, TOGETHER WITH the abandoned Appleby Street Right-of-Way lying north of and adjacent thereto described in Official Records Book 2948, Page 1083, LESS that portion of the west 38 feet of Lot 14 deeded to the City of Boca Raton in that certain Deed, recorded in Official Records Book 2948, Page 1091, all of the Public Records of Palm Beach County, Florida.

Said lands situate in the City of Boca Raton, Palm Beach County, Florida and containing 52,884 square feet (1.21 acres), more or less.

CERTIFICATION:

I HEREBY CERTIFY that the attached Land Survey of the hereon described property is true and correct to the best of my knowledge and belief as surveyed in the field under my direction. I FURTHER CERTIFY that this Land Survey meets the Minimum Technical Standards set forth in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes. There are no above ground encroachments other than those shown hereon, subject to the qualifications noted hereon.

Date: 9/20/05

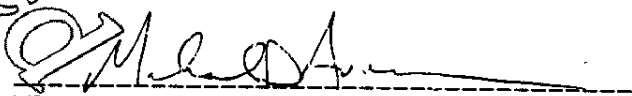

MICHAEL D. AVIROM, P.L.S.
Florida Registration No. 3268
AVIROM & ASSOCIATES, INC.
L.B. No. 3300

EXHIBIT 3

REVISIONS 09/20/05 (N.I.) 		AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 60 S.W. 2ND AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 TEL. (561) 392-2594, FAX (561) 394-7125 © 2005 AVIROM & ASSOCIATES, INC. ALL RIGHTS RESERVED.	JOB NO. 7598-1 SCALE: N/A DATE: 07/18/05 DRAWN BY: M.M.K. SHEET: 1 OF: 2
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THE BERKELEY - A CONDOMINIUM

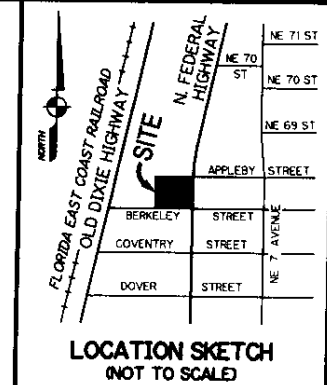
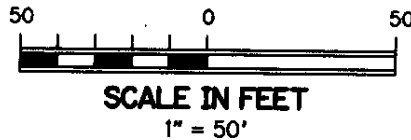
(A PORTION OF BLOCK "A", DELRAY MANORS - P.B. 10, PG. 25, P.B.C.R.)

SURVEY AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

4 STORY OFFICE BUILDING

LEGEND

- ▣ CATCH BASIN
- CONCRETE UTILITY POLE
- ♿ HANDICAP PARKING
- ▲ LANDSCAPE LIGHT
- ☼ LIGHT POLE
- ⑤ NUMBER OF REGULAR PARKING
- WOOD UTILITY POLE



NORTH

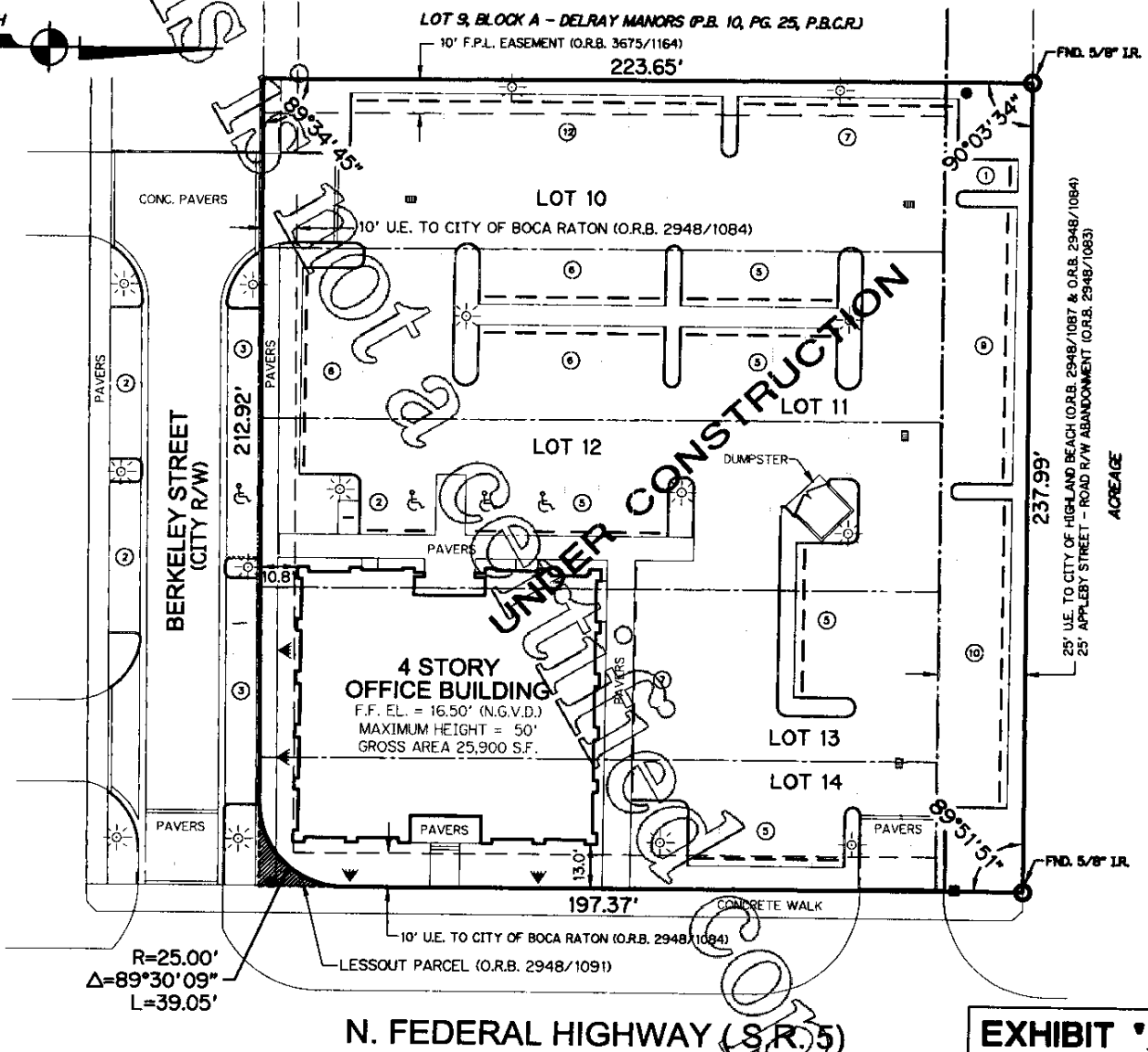


EXHIBIT 3

REVISIONS

09/20/05 (N.I.)



AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING
 50 S.W. 2ND AVENUE, SUITE 102
 BOCA RATON, FLORIDA 33432
 TEL. (561) 392-2594, FAX (561) 394-7125
 © 2005 AVIROM & ASSOCIATES, INC. ALL RIGHTS RESERVED.

JOB NO. 7598-1

SCALE: 1" = 50'

DATE: 07/18/05

DRAWN BY: M.M.K.

SHEET: 2 OF 2

THE BERKELEY - A CONDOMINIUM

(A PORTION OF BLOCK "A", DELRAY MANORS - P.B. 10, PG. 25, P.B.C.R.)
LOCATED AT N. FEDERAL HIGHWAY AND BERKELEY STREET, BOCA RATON, FLORIDA

4 STORY OFFICE BUILDING

SURVEYOR'S CERTIFICATION:

The Undersigned, being a surveyor authorized to practice in the State of Florida, hereby makes this certification in compliance with F.S. 718.104 (4) (e) and certifies that the construction of improvements of THE BERKELEY - A CONDOMINIUM, described in this survey, plot plan and graphic description is substantially complete as to exterior building walls (improvements within Common Elements and Units which are contemplated under the Declaration of Condominium for THE BERKELEY - A CONDOMINIUM, are not substantially complete) so that such material, together with the Declaration of Condominium for THE BERKELEY - A CONDOMINIUM, describing the condominium property, is an accurate representation of the location and dimensions of the improvements and further that the identification, location and dimension of the common elements and each unit in THE BERKELEY - A CONDOMINIUM, can be determined from these materials.

This Survey complies with Minimum Technical Standards set forth in Chapter 61G17, Florida Administrative Code, pursuant to Section 472.027. This certification relates to matters of this survey only, and is not to certify that the improvements have been properly constructed or are in accordance with any applicable building codes or governmental requirements.

Signed this 20th, day of September, 2005.

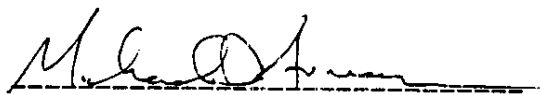

MICHAEL D. AVIROM, P.L.S.
Florida Registration No. 3268
AVIROM & ASSOCIATES, INC.
L.B. No. 3300

EXHIBIT 3

REVISIONS REVISED 09/12/05 (M.M.K.) REVISED 09/20/05 (N.I.)	 AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 60 S.W. 2ND AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 TEL. (561) 392-2594, FAX (561) 394-7125 © 2005 AVIROM & ASSOCIATES, INC. ALL RIGHTS RESERVED.	JOB NO. 7598-1 SCALE: N/A DATE: 07/18/05 DRAWN BY: M.M.K. SHEET: 1 OF: 7
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THE BERKELEY - A CONDOMINIUM

(A PORTION OF BLOCK "A", DELRAY MANORS - P.B. 10, PG. 25, P.B.C.R.)
LOCATED AT N. FEDERAL HIGHWAY AND BERKELEY STREET, BOCA RATON, FLORIDA

4 STORY OFFICE BUILDING

LAND DESCRIPTION:

Lots 10, 11, 12, 13 and the west 38 feet of Lot 14, Block A, DELRAY MANORS, according to the map or plat thereof, recorded in Plat Book 10, Page 25 of the Public Records of Palm Beach County, Florida, TOGETHER WITH the abandoned Appleby Street Right-of-Way lying north of and adjacent thereto described in Official Records Book 2948, Page 1083, LESS that portion of the west 38 feet of Lot 14 deeded to the City of Boca Raton in that certain Deed, recorded in Official Records Book 2948, Page 1091, all of the Public Records of Palm Beach County, Florida

EXHIBIT 3

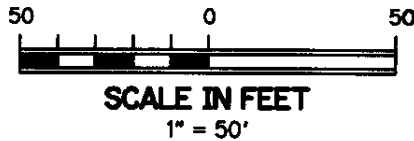
REVISIONS			AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 60 S.W. 2ND AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 TEL. (561) 392-2594, FAX (561) 394-7125 © 2005 AVIROM & ASSOCIATES, INC. ALL RIGHTS RESERVED.		JOB NO. 7598-1
REVISED 09/12/05 (M.M.K.)					SCALE: N/A
REVISED 09/20/05 (N.I.)					DATE: 07/18/05
					DRAWN BY: M.M.K.
					SHEET: 2 OF: 7

THE BERKELEY - A CONDOMINIUM

(A PORTION OF BLOCK "A", DELRAY MANORS - P.B. 10, PG. 25, P.B.C.R.)
 LOCATED AT N. FEDERAL HIGHWAY AND BERKELEY STREET, BOCA RATON, FLORIDA
PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS
4 STORY OFFICE BUILDING

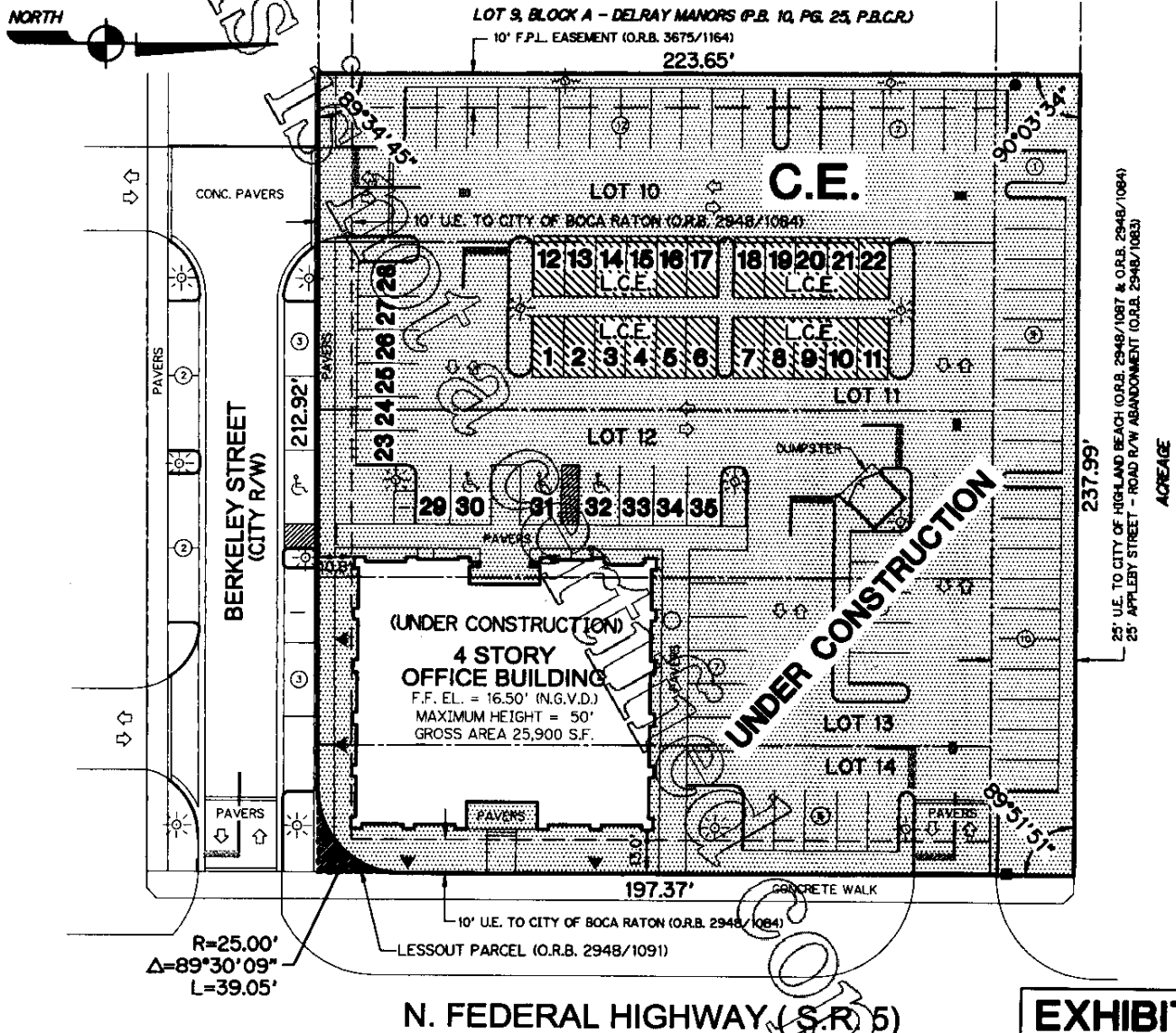
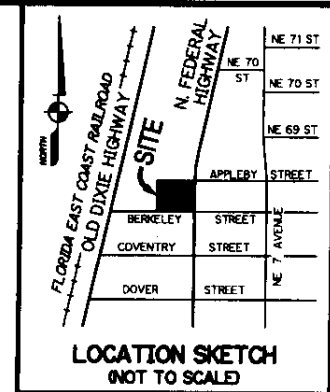
GENERAL NOTES:

1. ALL INTERIOR WALL IMPROVEMENTS ARE PROPOSED.
2. ALL DIMENSIONS ARE APPROXIMATE.
3. PLANS SUBJECT TO CHANGE DUE TO MINOR ARCHITECTURAL REVISIONS.
4. INTERIOR DIVIDING WALL WIDTHS VARY.
5. EXTERIOR WALL WIDTHS VARY.
6. FOR ALL OTHER PERTINENT INFORMATION REFER TO THE DECLARATION OF CONDOMINIUM.



LEGEND:

- DENOTES COMMON ELEMENT (C.E.)
- DENOTES LIMITED COMMON ELEMENT (L.C.E.)



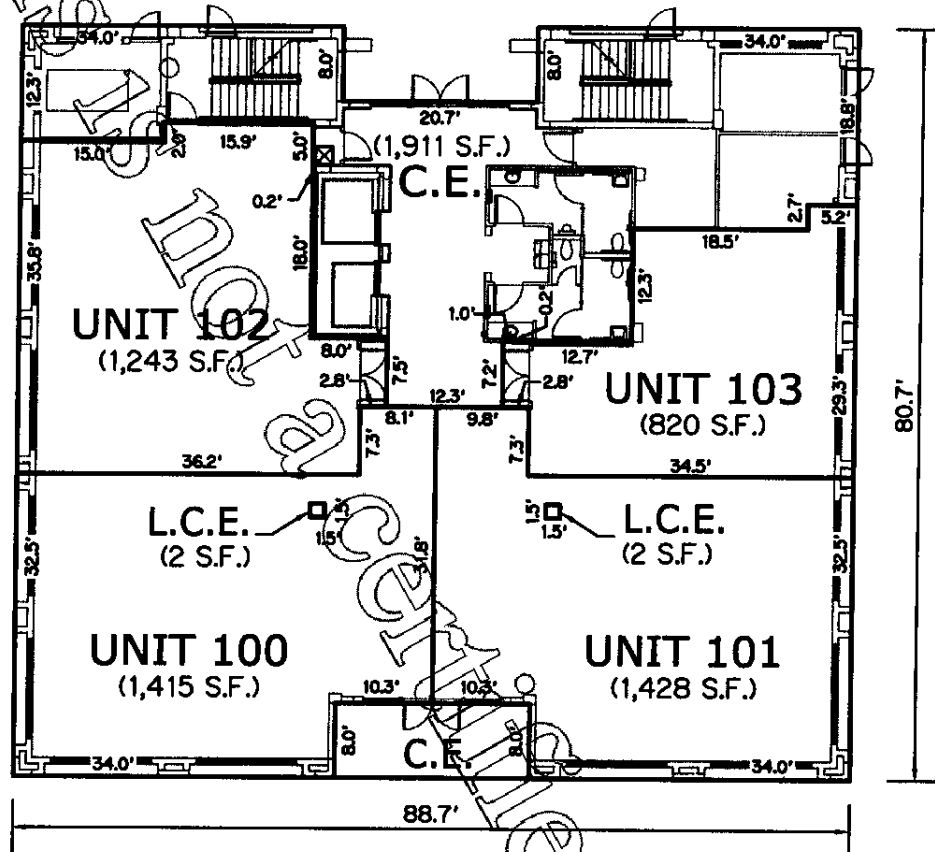
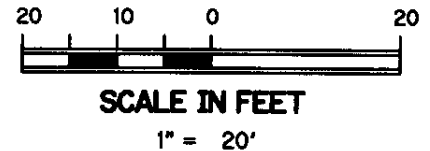
THE BERKELEY - A CONDOMINIUM

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PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

GROUND FLOOR

GENERAL NOTES:

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2. ALL DIMENSIONS ARE APPROXIMATE.
3. PLANS SUBJECT TO CHANGE DUE TO MINOR ARCHITECTURAL REVISIONS.
4. INTERIOR DIVIDING WALL WIDTHS VARY.
5. EXTERIOR WALL WIDTHS VARY.
6. FOR ALL OTHER PERTINENT INFORMATION REFER TO THE DECLARATION OF CONDOMINIUM.



ABBREVIATIONS:

C.E. COMMON ELEMENT
L.C.E. LIMITED COMMON ELEMENT
S.F. SQUARE FEET

GROUND FLOOR:

ELEVATION OF LOWER LIMITS OF UNIT = 16.49'
ELEVATION OF UPPER LIMITS OF UNIT = 28.24'
NOTE: ELEVATIONS ARE BASED ON THE N.G.V.D.
DATUM OF 1929.



EXHIBIT 3

REVISIONS

REVISED 09/01/05 (M.M.K.)
REVISED 09/12/05 (M.M.K.)
REVISED 09/20/05 (N.I.)



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JOB NO. 7598-1
SCALE: 1" = 20'
DATE: 07/18/05
DRAWN BY: M.M.K.
SHEET: 4 OF 7

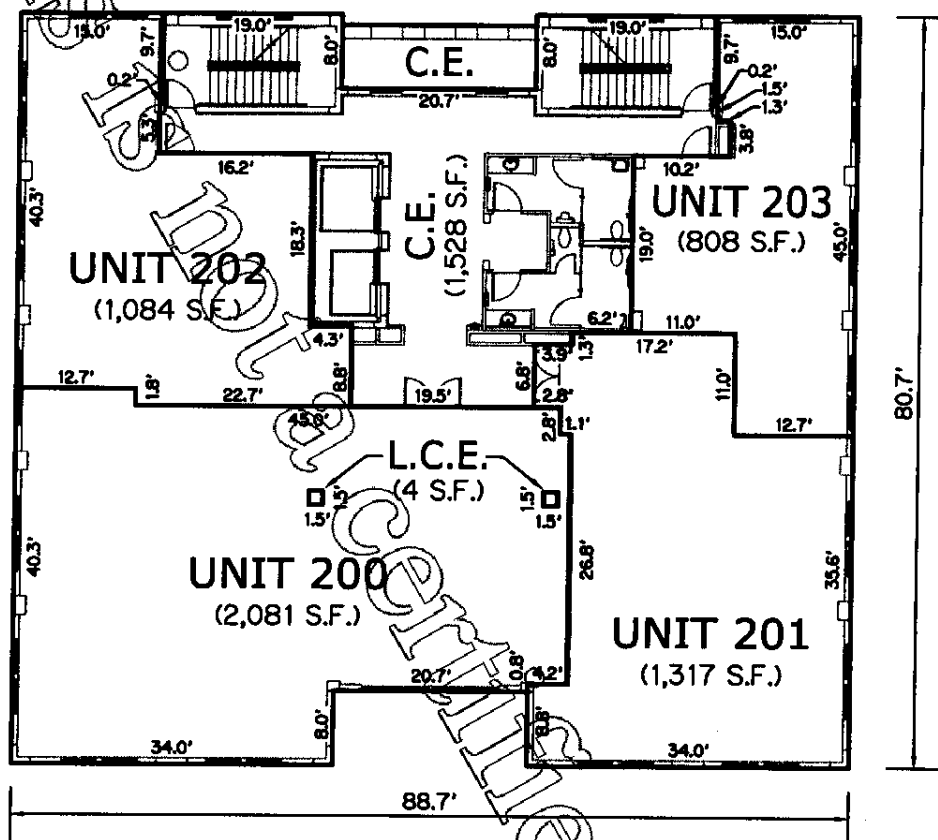
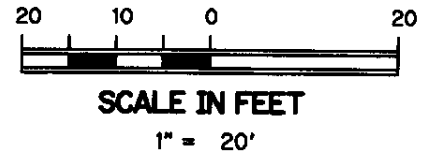
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PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

SECOND FLOOR

GENERAL NOTES:

1. ALL INTERIOR WALL IMPROVEMENTS ARE PROPOSED.
2. ALL DIMENSIONS ARE APPROXIMATE.
3. PLANS SUBJECT TO CHANGE DUE TO MINOR ARCHITECTURAL REVISIONS.
4. INTERIOR DIVIDING WALL WIDTHS VARY.
5. EXTERIOR WALL WIDTHS VARY.
6. FOR ALL OTHER PERTINENT INFORMATION REFER TO THE DECLARATION OF CONDOMINIUM.



ABBREVIATIONS:

C.E. COMMON ELEMENT
L.C.E. LIMITED COMMON ELEMENT
S.F. SQUARE FEET

SECOND FLOOR:

ELEVATION OF LOWER LIMITS OF UNIT = 29.02'
ELEVATION OF UPPER LIMITS OF UNIT = 40.72'
NOTE: ELEVATIONS ARE BASED ON THE N.G.V.D.
DATUM OF 1929.



EXHIBIT 3

REVISIONS

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JOB NO. 7598-1
SCALE: 1" = 20'
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DRAWN BY: M.M.K.
SHEET: 5 OF: 7

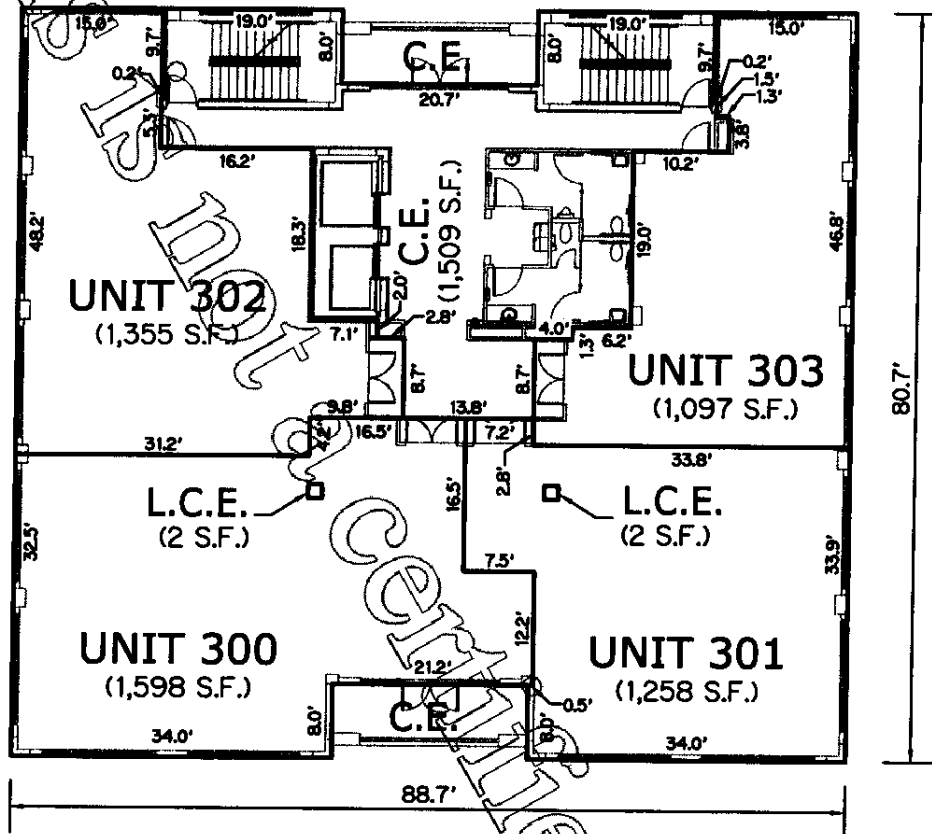
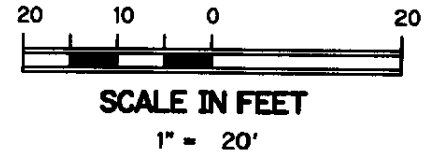
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PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

THIRD FLOOR

GENERAL NOTES:

1. ALL INTERIOR WALL IMPROVEMENTS ARE PROPOSED.
2. ALL DIMENSIONS ARE APPROXIMATE.
3. PLANS SUBJECT TO CHANGE DUE TO MINOR ARCHITECTURAL REVISIONS.
4. INTERIOR DIVIDING WALL WIDTHS VARY.
5. EXTERIOR WALL WIDTHS VARY.
6. FOR ALL OTHER PERTINENT INFORMATION REFER TO THE DECLARATION OF CONDOMINIUM.



ABBREVIATIONS:

C.E. COMMON ELEMENT
 L.C.E. LIMITED COMMON ELEMENT
 S.F. SQUARE FEET

THIRD FLOOR:

ELEVATION OF LOWER LIMITS OF UNIT = 41.47'
 ELEVATION OF UPPER LIMITS OF UNIT = 53.24'
 NOTE: ELEVATIONS ARE BASED ON THE N.G.V.D. DATUM OF 1929.

NORTH

EXHIBIT 3

REVISIONS

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JOB NO. 7598-1
 SCALE: 1" = 20'
 DATE: 07/18/05
 DRAWN BY: M.M.K.
 SHEET: 6 OF: 7

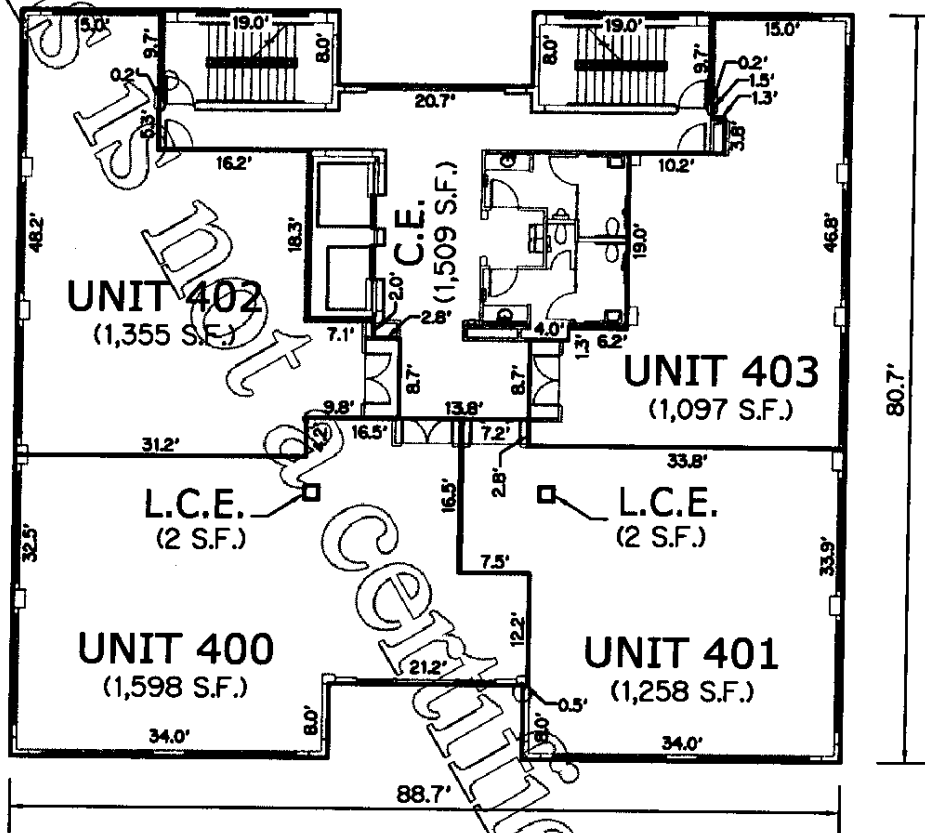
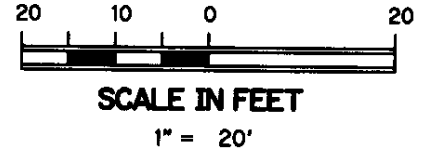
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PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS

FOURTH FLOOR

GENERAL NOTES:

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2. ALL DIMENSIONS ARE APPROXIMATE.
3. PLANS SUBJECT TO CHANGE DUE TO MINOR ARCHITECTURAL REVISIONS.
4. INTERIOR DIVIDING WALL WIDTHS VARY.
5. EXTERIOR WALL WIDTHS VARY.
6. FOR ALL OTHER PERTINENT INFORMATION REFER TO THE DECLARATION OF CONDOMINIUM.



ABBREVIATIONS:

C.E. COMMON ELEMENT
L.C.E. LIMITED COMMON ELEMENT
S.F. SQUARE FEET

FOURTH FLOOR:

ELEVATION OF LOWER LIMITS OF UNIT = 53.97'
ELEVATION OF UPPER LIMITS OF UNIT = 65.72'
NOTE: ELEVATIONS ARE BASED ON THE N.G.V.D.
DATUM OF 1929.



EXHIBIT 3

REVISIONS

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REVISED 09/12/05 (M.M.K.)
REVISED 09/20/05 (N.I.)



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JOB NO. 7598-1

SCALE: 1" = 20'

DATE: 07/18/05

DRAWN BY: M.M.K.

SHEET: 7 OF: 7

EXHIBIT "4"

BY-LAWS OF

THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC.

A corporation not for profit organized

under the laws of the State of Florida

1. **Identity.** These are the By-Laws of THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain condominium located in Palm Beach County, Florida, and known as THE BERKELEY, A CONDOMINIUM (the "Condominium")
 - 1.1 **Principal Office.** The principal office of the Association shall be 6751 N. Federal Highway, Boca Raton, Florida, 33431 or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.
 - 1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.
 - 1.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not For profit", and the year of incorporation.
2. **Definitions.** For convenience, these By-Articles of Incorporation of the Association as the "Articles", The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium unless herein provided to the contrary, or unless the context otherwise requires.
3. **Members.**
 - 3.1 **Annual Meeting.** The annual members' meeting shall be held within thirty (30) days of September 1 of each year on the exact date at the place and at the time determined by the Board of Directors from time to time. There shall be an annual meeting every calendar year. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof.
 - 3.2 **Special Meetings.** Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a

majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

- 3.3 **Notice of Meeting; Waiver of Notice.** Notice of a meeting of members stating the time and place and the purpose(s) for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting. Proof of posting shall be given by Affidavit, and proof of mailing of the notice shall be given by retention of post office receipts. The Association shall comply with the requirements of Florida Statute 718.122(d)3 concerning all elections of directors.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

- 3.4 **Quorum.** A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast a majority of the votes of the entire membership. If voting rights of any member are suspended pursuant to the provisions of the Declaration, these By-Laws or applicable rules and regulations, the votes of such member so suspended shall not be counted for the purpose of determining the presence of a quorum and the total number of authorized votes shall be reduced accordingly during the period of such suspension.

3.5 **Voting.**

- (a) **Number of Votes.** Except as provided in paragraph 3.10 hereof, in any meeting of members, there will be 100 total votes in the Association. Each Unit Owner will be entitled to that number of votes equal to that Unit Owner's percentage interest in the Common Elements as described in Exhibit 2 to the Declaration.
- (b) **Majority Vote.** The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes except where

otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean those Unit Owners having more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained.

- (c) **Voting Member.** If a Unit is owned by one person, his right to vote shall be established by the roster of members. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit according to the roster of Unit Owners and filed with the Secretary of the Association. Such person need not be a Unit Owner, nor one of the joint owners. If a Unit is owned by a corporation or other business entity, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer or representative of the corporation or entity and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote of the Owner(s) of such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed, except if the Unit is owned jointly by a husband and wife. If a Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting member in the manner provided above. Such designee need not be a Unit Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

- (i) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).
- (ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Unit vote just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

- (iii) If both are present at a meeting and concur, either one may cast the Unit vote.

3.6 **Proxies.** Votes may be cast in person or by proxy. A limited proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the Unit (as above described) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Unit Owners, but no person other than a designee of the Developer may hold more than five (5) proxies.

3.7 **Adjourned Meetings.** If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.8 **Order of Business.** If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
Call to order by President;

- (a) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
- (b) Proof of notice of the meeting or waiver of notice;
- (c) Reading of minutes;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Appointment of inspectors of election;
- (g) Determination of number of Directors;
- (h) Election of Directors;
- (i) Unfinished business;

- (k) New business;
- (l) Adjournment.

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

3.9 **Minutes of Meeting.** The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years. Any Unit Owner shall have the right to tape record a meeting.

3.10 **Delinquent Owners.** If any Assessment or portion thereof imposed against a Unit Owner remains unpaid for thirty (30) days after the date due and payable, such Unit Owner's voting rights in the Association shall be automatically suspended until all such past due Assessments and all other sums then due are paid, whereupon the voting rights shall be automatically reinstated.

3.11 **Action Without A Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such member as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of such members at which a quorum of such members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

4. **Directors.**

4.1 **Membership.** The affairs of the Association shall be governed by a Board of not less than three (3), nor more than seven (7) directors, the exact number to be determined in the first instance in the Articles, and thereafter, except as provided herein, from time to time upon majority vote of the membership. Directors need not be Unit Owners.

4.2 **Election of Directors.** Election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual members' meeting, except as provided herein to the contrary.

- (b) Nominations for Directors and additional directorships created at the meeting shall be made according to Florida Statutes, Section 718.112, as amended from time to time.
- (c) The election shall be by written ballot or voting machine and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.16 hereof shall be filled by the Developer without the necessity of any meeting.
 - (b) Any Director may be removed by concurrence of two-thirds (2/3) of the votes of the members at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting, unless such Director was appointed by the Developer, in which case the Developer shall appoint another Director without the necessity of any meeting.
 - (c) Provided, however, that until a majority of the Directors are elected by the members other than the Developer of the Condominium, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.
- 4.4 **Term.** Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.
- 4.5 **Organizational Meeting.** The organizational meeting of newly-elected or appointed members of the Board of Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary.

- 4.6 **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized, at any such meeting.

Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized, at any such meeting.

- 4.8 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

- 4.9 **Quorum.** A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

- 4.10 **Adjourned Meetings.** If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

4.11 **Presiding Officer.** The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside). In the absence of the presiding officer, the Directors present may designate any person to preside.

4.12 **Order of Business.** If a quorum has been attained, the order of business at Directors' meetings shall be:

- (a) Proof of due notice of meeting;
- (b) Reading and disposal of any unapproved minutes;
- (c) Reports of officers and committees;
- (d) Election of officers;
- (e) Unfinished business;
- (f) New business;
- (g) Adjournment.

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

4.13 **Minutes of Meetings.** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

4.14 **Executive Committee; Other Committees.** The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in paragraphs (g) and (p) of Section 5 below.

The Board may by resolution also create other committees and appoint persons to such committees and invest in such committees such powers and responsibilities as the Board shall deem advisable.

- 4.15 **Proviso.** Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own fifteen (15%) percent or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (b) three months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them having 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 Declaration is recorded, whichever occurs first.

The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such 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 Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control. The Developer may always elect one (1) Director as long as it owns and holds one (1) Unit for sale.

Within sixty (60) days after the Unit Owners, other than the Developer, are entitled to elect a member or members of the Board of Directors, or if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than thirty (30) days' nor more than forty (40) days' notice of a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Within a reasonable time after Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association (but not more than sixty (60) days after such event), the Developer shall relinquish control of the Association

and shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Developer, including but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration of the Condominium for each of the Condominiums operated by the Association, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- (b) A certified copy of the Articles of Incorporation for the Association;
- (c) A copy of the By-Laws of the Association;
- (d) The Minute Books, including all minutes, and other books and records of the Association;
- (e) Any Rules and Regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Developer;
- (g) An audit and accounting, which need not be certified, for all Association funds performed by an auditor independent of the Developer, including capital accounts or reserve accumulations, if any;
- (h) Association Funds or the control thereof;
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property;
- (j) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment, and for the construction and installation of all mechanical components servicing the improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the improvements and the Condominium Property;
- (k) Insurance policies;

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

4.16 **Action Without a Meeting.** Anything to the contrary herein notwithstanding, and to the extent lawful, any action required to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors or a committee thereof, may be taken without a meeting if a consent in writing setting forth the action so to be taken signed by all of the Directors or all the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote. No prior notice of such intended action shall be required to be given to the Directors or to the Unit Owners. Notice of the taking of such action pursuant hereto shall, however, be posted conspicuously on the Condominium Property for the attention of Owners after such action shall have been effected. Such notice shall fairly summarize the material features of the action so taken.

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

- (a) Operating and maintaining the Common Elements.
- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Collecting the Assessments for Common Expenses from Unit Owners.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association, or its designee.
- (h) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association, or its designee.
- (j) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (k) Obtaining and reviewing insurance for the Condominium Property.
- (l) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (m) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (n) Levying fines, consistent with Florida Statutes, Chapter 718, against Unit Owners, when necessary, for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners.

- (o) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association property; provided, however, that the consent of the Owners of at least two-thirds (2/3) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum in excess of \$20,000.00. If any sum borrowed by the Board of Directors on behalf of the condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit.
- (p) Contracting for the management of the Condominium and delegating to such contractor such powers and duties of the Board of Directors as the Board may deem appropriate under the circumstances, except those which may be required by the Declaration, the Articles or these By-Laws to be approved by the Board of Directors or by the Unit Owners; contracting for the management or operation of portions of the Condominium Property susceptible to separate management or operation; and granting concessions for the purpose of providing services to the Unit Owners. In exercising this power, the Association may contract with affiliates of itself and of the Developer.
- (q) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Florida Condominium Act, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.
- (s) Suspending the right of any Unit Owner to vote so long as said Unit Owner is delinquent in the payment of Common Expenses or otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulations.

6. **Officers.**

- 6.1 **Executive Officers.** The executive officers of the Association shall be a President, who shall be a Director, a Vice-President, who shall be a Director, a Treasurer, a Secretary and an Assistant Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold

more than one office, except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Unit Owners.

6.2 **President.** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.

6.3 **Vice-President.** The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as shall otherwise be prescribed by the Directors.

6.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an association and as may be required by the Directors or the President.

6.5 **Assistant Secretary.** The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.

6.6 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidence of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices on an aggregate basis and on an individual Condominium basis, which, together with substantiating papers, shall be made available to the Board of Directors and any Unit Owner for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. **Compensation.** Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all

actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

8. **Resignations.** Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective.

9. **Fiscal Management.** The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

- 9.1 **Budget.**

Adoption by Board; Items. 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 expenses of such Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount of reserves shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. Reserves shall not be required if the members of the Association have, by a two-thirds (2/3) vote at a duly called meeting of the a two-thirds (2/3) vote at a duly called meeting of the members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. Additionally, the Developer may vote to waive reserves for a certain period of time, as provided in Florida Statutes, Section 718.112(2)(e)2 or any other applicable provision of the Act.

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

- (i) **Notice of Meeting.** A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to such Unit Owners, provided that such Unit Owners shall not have the right to participate, and need not be recognized, at such meeting.

(ii) **Special Membership Meeting.** If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen (115%) percent of such Assessments for the preceding year, as hereinafter defined, upon written application of ten (10%) percent of such Unit Owners, a special meeting of such Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each such Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, such Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than fifty (50%) percent of all the Units (including Units owned by the Developer).

(iii) **Determination of Budget Amount.** In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen (115%) percent of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation Assessments for improvements to the Condominium Property.

(iv) **Proviso.** As long as the Developer is in control of the Board of Directors of the Association, such Board shall not impose an Assessment for a year greater than one hundred fifteen (115%) percent of the prior year's Assessment, as herein defined, without the approval of Unit Owners owning majority of the Units (including Units owned by the Developer)

(b) **Adoption by Membership.** In the event that the Board of Directors shall be unable to adopt a budget in accordance with the requirements of Sub-section 9.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the members and if such budget is adopted by such members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

9.2 **Assessments.** Assessments against the Unit Owners for their share of the items of the budget shall be made for the applicable calendar year annually in advance on or before December 20th preceding the year for which the Assessments are made. Such

Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment, and monthly (or quarterly) installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event the annual Assessment proves to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors. Unpaid Assessments for the remaining portion of the calendar year for which an amended Assessment is made shall be payable in as many equal installments as there are full months (or quarters) of the calendar year left as of the date of such amended Assessment, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessment, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessment shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

- 9.3 **Assessments for Charges.** Charges by the Association against members for other than Common Expenses shall be payable in advance. These charges may be collected by Assessment in the same manner as Common Expenses, and when circumstances permit, those charges shall be added to the Assessments for Common Expenses. Charges for other than Common Expenses may be made only after approval of a member or when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of the Condominium Property or recreation areas, maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner and fines and damages and other sums due from such Owner.
- 9.4 **Assessments for Emergencies.** Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after thirty (30) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of Assessment.
- 9.5 **Depository.** The depository of the Association shall be such bank or banks in the County as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund

or divided into more than one fund, as determined by a majority of the Board of Directors.

- 9.6 **Acceleration of Assessment Installments Upon Default.** If a Unit Owner shall be in default in the payment of an installment upon an Assessment, the Board of Directors may accelerate the remaining installments of the Assessment upon notice to the Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

- 9.7 **Fidelity Bonds.** Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a Common Expense.

- 9.8 **Accounting Records and Reports.** The Association shall maintain accounting records in the County, according to good accounting practices. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within sixty (60) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amounts of receipt by accounts and receipt classifications and shall show the amounts of expense classifications, including, if applicable, but not limited to, the following:

- a. Cost for security;
- b. Professional and management fees and expenses;
- c. Taxes;
- d. Expenses for refuse collection and utility services;
- e. Expenses for lawn care and gardening;

- f. Costs for building maintenance and repair;
- g. Insurance costs;
- h. Administrative and salary expenses; and
- i. General reserves, maintenance reserves and depreciation services.

9.9 **Application of Payment.** All Assessment payments made by a Unit Owner shall be applied as provided herein and in the Declaration or as determined by the Board.

9.10 **Notice of Meetings.** Notice of any meeting where 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.

10. **Roster of Unit Owners.** Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date of notice of any meeting requiring their vote is given shall be entitled to notice of an to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive notice of such meeting.

11. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

12. **Amendments.** Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:

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

12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors 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. The approval must be:

- (a) by not less than a majority of the votes of all members of the Association represented at a meeting which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or

- (b) by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
- (c) by not less than 100% of the entire Board of Directors.

12.3 **Proviso.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration.

12.4 **Execution and Recording.** A copy of each amendment, conforming in all respects to Florida Statutes Section 718.112, as amended, shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County.

13. **Rules and Regulations.** Annexed hereto as Schedule A and made part hereof are rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units represented at a meeting at which a quorum is present may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
14. **Arbitration.** The Association herewith adopts the provisions of Florida Statutes Section 718.1255, as amended from time to time, concerning alternative dispute resolution.
15. **Certificate of Compliance.** The Association acknowledges and agrees that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Condominium Units to all applicable fire and safety codes.
16. **Construction.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

17. **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

The foregoing was adopted as the By-Laws of THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, on the 15 day of NOVEMBER, 2004.

Approved:

President

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**SCHEDULE A
TO
BY-LAWS**

THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC.

ADOPTION OF RULES AND REGULATIONS BY BOARD OF DIRECTORS

The Board of Directors of the Berkeley of Boca Raton Condominium Association, Inc., pursuant to paragraph 5(e) of the Association's By-laws, hereby adopt the following Rules and Regulations:

RULES AND REGULATIONS

1. All Unit Owners shall maintain their Unit in a first-class condition, as is consistent with the Condominium building being a Class A office property in Boca Raton, Florida.
2. No Unit Owner shall cause or permit any interior or exterior signage to be displayed, except in accordance with the written approval of the Board of Directors.
3. The Board of Directors shall, from time to time, have the authority to adopt uniform interior and/or exterior signage requirements for the Units and/or for the Condominium building itself.
4. All Unit Owners shall purchase from the Developer and shall maintain the entry doors to their own Unit. The Board of Directors shall have the authority, from time to time, to adopt uniform required suite entry door standards, including but not limited to, type of door, color, size and hardware.
5. The Board of Directors shall have the authority, from time to time, to engage the services of a janitorial or cleaning services company. The Board of Directors may

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require, pursuant to these Rules and Regulations, that all Unit Owners' suites be cleaned regularly by such company, in order to maintain uniformity and high standards of cleanliness and appearance for the entire Condominium Building and all Units.

6. The Board of Directors shall have the authority, from time to time, to adopt uniform window treatment standards which may describe, prescribe and/or prohibit certain types of window treatments. Window treatments shall consist solely of solar shades and/or 1 1/2 inch horizontal wooden blinds, the color swatch of which is available from the Board of Directors and is intended to be consistent with the exterior color of each Unit Owner's suite entry doors.
7. The Association shall have the authority to place such signage in the parking lot as is necessary to designate assigned/reserved versus unreserved parking, and to designate for whom any assigned parking spaces are reserved. Any Unit Owner wishing to have their parking space assignment remain publicly anonymous shall have the right to request the Association to remove any such designation from their assigned parking space.
8. All expenses for the maintenance, repair and replacement of covered parking space canopies shall be paid for, on a pro-rata basis, in accordance with the number of spaces owned, by the owners of the canopy covered parking spaces.
9. The Condominium building shall be open for public access (common entry doors shall remain unlocked) on Monday through Friday during the hours of 8:00 a.m. until 5:30 p.m. During all other times, entry may be gained through the Building's secured entry system. The building's secured entry system shall have one or more access

codes, and no Unit Owner shall communicate any such access code to any person other than those who necessarily must have knowledge of the code for entry into the Building in the ordinary course of such Unit Owner's business.

10. In order to avoid transient use of the building, and except for the Developer, no lease of less than six (6) months duration shall be permitted, without the prior consent of the Board of Directors (which consent may be withheld for any reason).
11. Unless prior consent from the Board of Directors is obtained, no person shall store any vehicle or other item(s) in the parking lot at any time, other than the vehicle they utilize on a daily basis to commute to and from the Condominium building. In no event shall any vehicle or other item(s) be stored overnight in the parking lot.
12. No Unit Owner shall permit a pet or any other animal to occupy or to be maintained in or about the Condominium Building or in any Unit. This rule shall not prevent clients or visitors from bringing a small pet or assistance animal (i.e., seeing eye dog) with them to occasional visits to a Unit, in the ordinary course of business.
13. All interior and exterior decorating of the common areas and the limited common elements shall be in the discretion of the Board of Directors. No Unit Owner shall cause any items of art, furniture, fixtures, improvements or other decorating to be made to any Limited Common Element or to any Common Element without the prior written consent of the Board of Directors.
14. The Developer has pre-installed a satellite TV dish, as well as separate conduits for Unit Owners' access to it, and separate conduits for phone, internet and low voltage access for all Unit Owners. Prior to any Unit Owner accessing satellite TV or any of the conduits for access, the Unit Owner shall pay a prescribed fee to the Developer

for accessing satellite TV or any of the conduits, in an amount determined by the Developer to cover the cost the Developer has incurred by having pre-installed the satellite TV, the satellite TV conduit and the phone/internet/low voltage conduit.

15. No Owner shall be permitted to install their own satellite for any reason. The only satellite(s) permitted shall be as approved and installed by the Developer or by the Association.

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The above Rules and Regulations are hereby adopted this 15 day of NOVEMBER


DONALD C. SIDER, Director


CAROLE LEE SIDER, Director


PAUL SLATTERY, Director

**ARTICLES OF INCORPORATION FOR
THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC.**

The undersigned subscribers by these Articles associate themselves for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, and hereby adopt the following Articles of Incorporation:

ARTICLE 1

NAME

The name of the corporation shall be THE BERKELEY OF BOCA RATON CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Palm Beach County, Florida, and known as THE BERKELEY, A CONDOMINIUM (the "Condominium").

ARTICLE 3

DEFINITIONS

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

ARTICLE 4

POWERS

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

- 4.1 **General.** The Association shall have all of the common law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 **Enumeration.** The Association shall have all of the powers and duties set forth in the Act, and all of the powers and duties reasonably necessary to operate the condominium pursuant to the Declaration and as more particularly described in the By-Laws (so long as such powers are not in conflict with the Act), as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Condominium.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium property, and other property acquired, operated or leased by the Association for use by Unit Owners.
 - (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and members as Unit Owners.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the condominium property and for the health, comfort, safety and welfare of the Unit Owners.
 - (f) To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of Units as may be provided by the Declaration.
 - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Condominium Property.
 - (h) To contract for the management of the Condominium and any facilities used by the Unit Owners, and to delegate to the party with which such contract has been entered into all of the powers and duties of the Association, except those which require specific approval of the Board of Directors or the membership of the

Association. In exercising this power, the Association may contract with affiliates of itself and the Developer.

- (I) To employ personnel to perform the services required for the proper operation of condominium.

4.3 **Condominium Property.** All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration these Articles and the By-Laws.

4.4 **Distribution of Income.** The Association shall make no distribution of income to its members, directors or officers.

4.5 **Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act.

ARTICLE 5

MEMBERS

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

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

5.3 **Voting.** On all matters upon which the membership shall be entitled to vote, there shall be one vote for each Unit, which votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast a vote for each Unit owned.

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

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

SUBSCRIBERS

The names and addresses of the subscribers to these Articles are as follows:

	<u>NAME</u>	<u>ADDRESS</u>
A.	Donald C. Sider	150 East Boca Raton Rd. Boca Raton, Florida 33432
B.	Carole L. Sider	150 East Boca Raton Rd. Boca Raton, Florida 33432
C.	Paul J. Slattery	2060 NW Boca Raton Boulevard, Suite #2 Boca Raton, Florida 33431

ARTICLE 8

OFFICERS

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

President:	Donald C. Sider
Vice President and Assistant Secretary:	Carole L. Sider
Secretary:	Carole L. Sider
Treasurer:	Donald C. Sider

ARTICLE 9

DIRECTORS

- 9.1 **Number and Qualification.** The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Association or occupants of Units in the Condominium.
- 9.2 **Duties and Powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by the Unit Owners when such approval is specifically required.
- 9.3 **Election; Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed amid vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 9.4 **Term of Developer's Directors.** The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 9.5 **First Directors.** The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, as provided in the By-Laws, are as follows:

	<u>NAME</u>	<u>ADDRESS</u>
A.	Donald C. Sider	150 East Boca Raton Rd. Boca Raton, Florida 33432
B.	Carole L. Sider	150 East Boca Raton Rd. Boca Raton, Florida 33432
C.	Paul J. Slattery	2060 NW Boca Raton Blvd., Suite #2 Boca Raton, Florida 33431

ARTICLE 10

INDEMNIFICATION

- 10.1 **Indemnity.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nob contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 10.2 **Expenses.** To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.
- 10.3 **Approval.** Any indemnification under Section 10.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the members.
- 10.4 **Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an