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DECLARATION OF CONDOMINIUM

OF

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

Cypress Naples, Ltd., a Florida limited partnership (hereinafter called the "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 Collier County, Florida, as more particularly described in Exhibit "A" annexed hereto.
- 1.2 Submission Statement. The Developer hereby submits the Land as defined in Section 2.20 herein and all Improvements erected or to be erected thereon, all rights and appurtenances belonging thereto, and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public and private utility installations therein or thereon (e.g., cable television) and any leased systems which may be located within or upon the land to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
- 1.3 Name. The name by which this condominium is to be identified is Positano Place at Naples IV (hereinafter called the "Condominium").

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

- 2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.
- 2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4 "Charge" means the obligation of a Unit Owner to pay or reimburse money to the Association that cannot be secured as an assessment under F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the Unit Owner under this Declaration.
- 2.5 "Association" or "Condominium Association" means Positano Place at Naples IV Condominium Association, Inc., a not-for-profit Florida corporation, the entity responsible for the operation and maintenance of the Condominium.

- 2.6 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.
- 2.7 "Board" or "Board of Directors" means the representative body which is responsible for administration of the Association.
- 2.8 "Buildings" means the structures, situated on the Land in which the Units are located, regardless of the number thereof.
- 2.9 "By-Laws" mean the by-laws of the Association, as they exist from time to time.
- 2.10 "Common Elements" means and includes: The portions of the Condominium Property which are not included in the Units, including, without limitation, the following items:
- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of Utility Services and/or heating, cooling, ventilation, or other services to more than one (1) Unit or to the Common Elements, together with related property and installations.
 - (b) An easement of support in every portion of a Unit which contributes to the support of the Building, other Units and/or any part of the Common Elements.
 - (c) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
 - (d) All chases and columns located within a Unit.
 - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.
- 2.11 "Common Expenses" means: (1) expenses of administration and management of the Condominium Property; (2) expenses of maintenance, operation, protection, repair or replacement of Common Elements and Association Property; (3) expenses declared Common Expenses by the provisions of this Declaration or by the By-Laws; (4) any valid charge against the Condominium as a whole; (5) expenses for the maintenance, repair or replacement of those portions of Units, if any, to be maintained by the Association, except to the extent that provisions of this Declaration provide that such costs are to be paid solely by the Unit Owner; (6) the costs of carrying out the powers and duties of the Association; (7) payments for leased systems and (8) all expenses properly incurred by the Association in the performance of its duties, including expenses specified in Florida Statute, Section 718.115. Common expenses also include all reserves required by the Act or otherwise established by the Association, regardless of when the reserve funds are expended, reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, security services, and pest control services to the Units and Common Elements, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium, and the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract, but shall not include any other separate obligations of individual Unit Owners.
- 2.12 "Common Surplus" means the amount of all receipts or revenues, including Assessments, rents or profits collected by the Association which exceeds Common Expenses.

- 2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.14 "Condominium Property" means the land, improvements and other personal property described in Subsection 1.2 hereof, subject to the limitations thereof and exclusions therefrom, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.15 "County" means the County of Collier, State of Florida.
- 2.16 "Declaration" or "Declaration of Condominium" means this instrument including any and all exhibits thereto, as it may be amended from time to time.
- 2.17 "Developer" or "Declarant" means Cypress Naples, Ltd., a Florida limited partnership, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. The transfer of control of the Association does not cause a termination of the rights of the Developer. Further, a lender may succeed to the rights of Developer without assuming the obligations of Developer.
- 2.18 "Improvements" means all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Land Property, including, but not limited to, the Buildings.
- 2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units by which greater than one-half (1/2) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.
- 2.20 "Land" means the real property described in Exhibit "A" upon which the Improvements have been constructed.
- 2.21 "Life Safety Systems" means those smoke detection systems which have been installed in the Building, both within and without the Units, pursuant to the requirements of the applicable governmental authority having jurisdiction over same. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, shall be Common Elements.
- 2.22 "Limited Common Elements" means those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.24 "Member" means an Owner who, or which, is a member of the Association.
- 2.25 "Parking Garage Unit" shall mean use of Units PGA and PGD, inclusive, same being parking garage areas which are hereby declared to be Units.

- 2.26 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.27 "Residential Unit" means and refers to a Unit which is to be used exclusively for residential purposes. All Units other than Parking Garage Units identified in Section 3.1 herein shall be deemed Residential Units.
- 2.28 "Unit" means a part of the Condominium Property which is subject to exclusive ownership, and except where specifically excluded, or the context otherwise requires, shall be deemed to include the Residential Units.
- 2.29 "Unit Owner" or "Owner of a Unit" or "Owner" means the owner of a Condominium Parcel.
- 2.30 "Utility Services" as used in the Condominium Act and construed with reference to this Condominium and as used in the Declaration, By-laws and Articles of Incorporation shall include, but not be limited to, electric power, gas, water, cable television, sprinkler, irrigation, drainage, sewage and garbage disposal.
- 2.31 "Storage Space" means a designated part of the Condominium Property that shall be used by the Unit Owner to which it is assigned to store personal property.
- 2.31 "Master Association" means Positano Place at Naples Master Association, Inc., the entity responsible for the operation and maintenance of certain amenities and areas that will be used by Unit Owners.
- 2.32 "Master Covenants" means those certain covenants and restrictions contained within the Declaration of Covenants, Easements and Restrictions for Positano Place at Naples, recorded in the public records of Collier County, Florida.
- 2.33 "The Properties" shall have the meaning as defined in the Master Covenants.

3. **DESCRIPTION OF CONDOMINIUM.**

- 3.1 **Identification of Units.** The Land has constructed thereon four (4) Buildings containing eighty-eight (88) Residential Units and Parking Garage Units as set forth on Exhibit "B" hereto. Each such Unit is identified by a separate numerical or alpha-numerical designation. Each Parking Garage Unit shall be identified by the letters PGA or PGD and a numerical designation. The designation of each of such Units is set forth on Exhibit "B" attached hereto. Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "B", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and 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 and assign 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; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

- (a) Owners of attached garage spaces will be assigned the space in front of their garage unit. Owners of detached garage spaces will be assigned a space in front of their building as well.
- (b) Owners of one bedroom units cannot own a garage unit.
- (c) All PGA Units can only be sold to a unit owner in the same building. PGD Units can be sold to any other Unit Owner.

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

- (a) Upper and Lower Boundaries of Residential Units. The upper and lower boundaries of each Residential 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 top floor of the Unit.
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the unfinished concrete floor of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Units shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, doors, garage doors, if any and all framing and casings therefor, shall be included in the boundaries of the Unit.
- (d) Boundaries - Further Defined. The boundaries of the Unit shall not include all of those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and those surfaces above the undecorated and/or inner surfaces of the ceilings of each Unit and, further, shall not include those spaces and improvements lying beneath the undecorated and unfinished inner surfaces of all interior bearing walls and/or bearing partitions and, further, shall exclude all chase and columns and all pipes, ducts, wires, conduit and other facilities running through any interior wall or partition for utility services to other Units and/or for Common Elements. No part of the interior non-boundary walls within a Unit shall be considered a boundary of the Unit. The Unit boundaries shall not include any of the Limited Common Elements.
- (e) Exceptions and Conflicts. In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit shown on Exhibit "B," the above provisions describing the boundary of a Unit shall control, it being the intention of this Declaration that the actual as-built boundaries of the Unit as above described shall control over erroneous dimensions contained in Exhibit "B" attached hereto, and in the event it shall appear that any dimension shown on Exhibit "B" attached hereto is erroneous, the Board of Directors or a majority of the voting interests of the Unit Owners shall have the right to amend the Declaration without a meeting to correct such survey, and any such amendment shall not require the joinder of any Institutional First Mortgagee so long as the

purpose of the amendment is merely to correct an error and correctly describe the boundaries of a Unit. In the case of Unit boundaries not adequately described as provided above, the survey of the Units contained in Exhibit "B" shall control in determining the boundaries of a Unit. In the case of any conflict between the language of this Declaration describing the boundaries of any Unit, and in the language contained on Exhibit "B" describing the boundaries of a Unit, the language of this Declaration shall control.

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

- (a) Terraces, Patios, and Lanais. Any terrace, patio, or lanai as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s).
- (b) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be Limited Common Elements of such Unit(s).
- (c) Parking Spaces. There is shown on the site plan attached to the Master Covenants parking spaces on the Common Elements of the Condominium which have been set aside for the exclusive use of the Condominium ("Parking Spaces"). There are numbered Parking Spaces in the Common Areas, provided however, that the number of parking spaces may be decreased as a result of construction requirements. All parking spaces shall be referred to as "Parking Spaces". At the time of conveyance of a Unit from the Developer, there shall be assigned to each Unit the use of one (1) Parking Space for that Unit Owner's exclusive use. The use of such Parking Space shall thereupon be appurtenant to said Unit and the use of such Parking Space shall be deemed and encumbered by and subject to any mortgage or claim thereafter encumbering said Unit, provided, however, that if a Unit has been assigned more than one (1) Parking Space, a Unit Owner may assign the use of one (1) Parking Space to another Unit Owner upon obtaining approval of the Master Association and the holder of any mortgages or claim encumbering the Parking Space. Upon conveyance of or passing of title to the Unit to which the use of a Parking Space is appurtenant, the Unit Owner receiving such title shall give satisfactory evidence to the Master Association of such title, and the Master Association shall thereupon cause to be executed in the name of the grantee or transferee of such Unit a new Assignment and record such transfer in the Master Association Book (defined below). No Parking Space may be assigned to anyone other than the Owner of a Unit. Such Assignment shall be executed by the President alone or any two (2) officers of the Master Association and shall describe the assigned Parking Space and the name of the transferee and transferee's Unit number. No one other than the Unit Owner to whom the Parking Space has been assigned may use same without that Unit Owner's express consent. The particular Parking Spaces so assigned shall be selected by the Developer and may be located wherever Developer so designates. The assignment by the Developer (or by the Master Association after the initial assignment by Developer) to a Unit Owner of the use of a Parking Space will be made by written "Assignment of Use of Parking Space" (the "Assignment") which will describe the Parking Space and will be delivered at the time of delivery of the deed to the Unit. The initial Assignment of each Parking Space shall be executed solely by the Developer. The

Association shall maintain a book (the "Master Association Book") for the purpose of recording the current assignee of each Parking Space. The Developer shall cause the Master Association to record all such Assignment in the Master Association Book and the Unit Owner to which such use is assigned shall have the exclusive right to the use thereof. Developer may also offer a limited number of covered and/or uncovered Parking Spaces for assignment on as-available basis as determined by Developer. All fees collected by Developer for assigning Parking Spaces, if any, shall be retained by Developer and shall not constitute income or revenue of the Master Association. There shall be no recordation amongst the public records of Collier County, Florida of the transfer or Assignment of a Parking Space.

After the Developer no longer owns any Units, any unassigned parking spaces shall be part of the Common Elements of the Condominium.

Any Unit Owner's guests, servants, invitees and employees shall use and be subject to the rules and regulations promulgated by the Board of Directors of the Association in connection with parking.

- (d) Storage Space Rooms and Storage Spaces. The Storage Spaces ("Storage Spaces") located in the Storage Space rooms of the Condominium are set out in Exhibit "B" attached hereto. The number of storage spaces may be decreased as a result of construction requirements. Unit Owners may obtain the use of a Storage Space, subject to availability, from the Developer whereupon Developer will assign to such purchaser the use of said Storage Space for that Unit Owner's exclusive use. The assignment by the Developer or Association to a Unit Owner of the use of Storage Space(s) will be made by written "Assignment of Use of Storage Space" (the "Storage Space Assignment") which will describe the Storage Space and will be delivered upon the purchase of the Storage Space(s). The Developer will cause the Association to record such Storage Space Assignment in the Association Book and the Unit Owner to which such use is assigned shall have the exclusive right to use thereof. All fees collected by Developer for assigning Storage Spaces, if any, shall be retained by Developer and shall not constitute income or revenue of the Association. Such Storage Space(s) assigned a Unit Owner may only be transferred to a Unit Owner in Positano Place at Naples IV or the Developer, and only upon prior written approval by the Developer. Notice and proof of any such approved transfer of the use of a Storage Space(s) shall be provided to the Association and the Association shall thereupon cause to be executed in the name of grantee or transferee a new Assignment of Storage Space(s) and record such transfer in the Association Book. Such Assignment of Storage Space(s) shall be executed by Developer alone, the President of the Association alone or any two (2) officers of the Association. There shall be no recordation amongst the Public Records of Collier County, Florida of the transfer or Assignment of Storage Space(s). Once a Storage Space is assigned for the exclusive use of a Unit, said Storage Space shall become a Limited Common Element appurtenant to that Unit. The Board of Directors shall have the right to promulgate rules and regulations in connection with such Storage Space.

All Storage Spaces, unless assigned, are Common Elements of the Condominium. Once a Storage Space is assigned and is a Limited Common Element, such Storage Space may not thereafter be separately conveyed, hypothecated, transferred, encumbered or otherwise dealt with, unless approved, in writing by the Developer or the Association and the use thereof shall pass only with title to the Unit to which it is appurtenant.

No Storage Space shall bear the same identifying number as any other.

(e) Restrictions on Parking Spaces.

(i) Notwithstanding any provision herein contained to the contrary, there shall always be at least one (1) Parking Space appurtenant to each Residential Unit. No transfer shall be made which shall result in a Unit having no Parking Space appurtenant thereto.

(ii) No boats, construction vehicles, trailer, jetskis, commercial vehicles, vehicles with commercial lettering, recreational vehicles, trailer homes, mobile homes and any vehicles used for business purposes shall be parked in any Parking Space.

(iii) The use of a Parking Space may be regulated by rules and regulations promulgated by the Board of Directors of the Association.

(iv) Notwithstanding that a Parking Space may be appurtenant to a particular Unit when it is originally assigned, if a Residential Unit is assigned for a fee by anyone other than the Developer, then any Parking Space and/or Additional Parking Space assigned to the Unit Owner must be (i) assigned to the purchaser of the Residential Unit or (ii) assigned to another Unit Owner or (iii) assigned to the Master Association for an amount equal to the fee paid for the parking space(s) by the seller of the Residential Unit subject to Master Association approval.

(v) The use of a Parking Space and Additional Parking Space may be regulated by rules and regulations promulgated by the Board of Directors of the Master Association.

(e) Parking Garage Units. Parking Garage Units will not be available by the Developer for Sale, assignment or transfer to Owners of one (1) bedroom Units. No Parking Garage Unit may be sold, assigned or transferred to anyone who is not a Unit Owner. Parking Garage Units may only be used by Unit Owners.

(f) The air-conditioning systems and heating systems servicing a Unit are Limited Common Elements. Accordingly, the Unit Owner shall maintain, repair and replace, at his own expense, any portions of such system in need thereof including, but not limited to, filters, compressors, condensers, motors, fans, heaters, and related parts.

3.4 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. and/or members of the Association, the Master Association and The Properties (as defined in the Master Covenants).

(b) Utility and Other Services; Drainage. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications, digital satellite systems, other satellite systems, Life Safety Systems, security systems, and other services and drainage in order to serve the Condominium. and/or members of the Association, the Master Association and The Properties (as defined in the Master Covenants).

A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications, digital satellite systems, other satellite systems, Life Safety Systems, security systems, or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, replacement of any of the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications, digital satellite systems, other satellite systems, security systems, Life Safety Systems, service and drainage facilities which are Common Elements and any other Common Elements contained in the Unit or elsewhere in the Condominium Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. Drainage systems on the Condominium Property, if any, shall be maintained continuously in good condition by the Association and easements are granted hereby over all Condominium Parcels in favor of all Owners and the Association with respect thereto; provided that such right of easement shall not unreasonably interfere with the Unit Owner's permitted use of his Unit. Such easements shall be for the use and benefit of Owners, Institutional Mortgagees, or occupants, and those claiming, by, through or under the aforesaid and for the benefit of all parties authorized to the use and enjoyment of the Land and Improvements. With respect to any easements set forth herein all such easements shall be for the use and benefit of Owners, Institutional Mortgagees or Occupants, and those claiming by, through or under the aforesaid and for the benefit of all parties authorized for the use and enjoyment of the recreational facilities and amenities.

- (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 Developer, as appropriate; or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand. (iii) any alteration or repair on The Properties, (as defined in the Master Covenants) to the Common Elements made by or with the consent of the Association or Developer, as appropriate;
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes, and such easements shall be for the use and benefit of Owners, Institutional Mortgagees or occupants, and those claiming by, through or under the aforesaid and for the benefit of all parties authorized to the use and enjoyment of the Land. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements

(other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction and maintenance thereof, or any part thereof, or any Improvements or Units located or to be located thereon. The Properties, (as defined in the Master Covenants).
- (f) Sales Activity. For as long as the Developer holds Units for Sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales and construction offices, to show model Units and use Units as guest suites, to show the Units and the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease. During the period that there are unsold Units offered by Developer, no Unit Owner or Tenant may display and "For Sale" or "For Lease" signs or any other advertising materials (i.e., banners, "bandit signs," balloons etc.), or hold Open Houses in Units. Thereafter, approval for such activities by Unit Owners or Tenants be obtained from the Association.
- (g) Cable TV and Communication Devices. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any closed circuit, master antenna, community antenna or cable television system or the like (including any and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominees) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as the "CATV System"), (ii) Ownership of any digital satellite system and/or other device for internet web-site communication or the future equivalent (including any and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment) which it or one of its successors, assigns, designees or nominees) installs in part or in whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as the ("DSS System") (iii) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the CATV System the DSS System, or any part thereof, (iv) the right to connect the CATV System and/or the DSS System to whatever receiving source the owner of the CATV System or the DSS System deems appropriate, (v) the right to enter the Units, upon reasonable notice to the Unit Owner for the purpose of repairing or replacing any portion of any closed circuit, master antenna, community antenna, digital satellite dish, or cable television system of which he has retained ownership, and (vi) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the CATV System and/or the Digital System (and related, ancillary services to Units, including, but not limited to, security-related services) at charges not to exceed those normally paid for like services by residents of single-family homes or condominium units within the general vicinity of the Condominium, and to retain or assign all such charges.

- (h) Future Development Easements. The Developer, for itself and its successors and/or assigns, reserves easements over the Condominium Property as necessary to complete future developments, if any, including construction access and utilities.
- (i) Special Telephone Services. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any telephone system whether land based, cellular or the future equivalent (including any and all related conduits, wires and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominee) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as "the Telephone System"), (ii) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the Telephone System or any part thereof, and (iii) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the Telephone System (and related, ancillary services), and to retain or assign the charges collected from Owners therefor.
- (j) Additional Easements. The Developer (for as long as it retains control of the Association) and the Association, thereafter, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, water, cable television, hurricane shutters, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the 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 dwelling purposes.
- (k) Cross-Use Easements. The Developer for itself and its successors and assigns reserves a perpetual non-exclusive ingress and egress easement across the Condominium Property for the purpose of all development and construction activities necessary to implement the development plan for the Condominium Property. implement the development plan for the Condominium under the Master Covenants.
- (l) Covenant. All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the Land, shall survive the termination of the Condominium, and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose. Owners do hereby designate Developer and/or Association as their lawful attorney in fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

3.5 The Master Association. The Condominium is part of a Community known as Positano Place at Naples. The Common Areas and The Properties of Positano Place at Naples are governed by the Master Association pursuant

to the Master Covenants. The Master Covenants also contain certain rules, regulations and restrictions relating to the use of such Common Areas as well as the Condominium Property (including Units). The Association will be a member of the Master Association and will be subject to all of the terms and conditions of the Master Covenants, as amended and supplemented from time to time. Among the powers of the Master Association are the power to assess Unit Owners (and other members of the Master Association) for a pro-rata share of the expenses of the operation and maintenance of the Common Areas under the Master Covenants serving the Condominium Property and the access easement areas and access roads to the Condominium Property (including the management fees relating to) of such Common Areas and to impose and foreclose liens in the event such assessments are not paid when due. Except for those instances where the use is limited pursuant to the Master Covenants, the Unit Owners shall be entitled to use all of said Common Areas in accordance with and subject to the terms of the Master Covenants. The Master Association may impose certain obligations on the Association including, but not limited to, obligating the Association to collect Assessments due the Master Association despite the fact that such Assessments are not Common Expenses of the Condominium. Nothing in the Master Covenants shall conflict with the powers and duties of the Association or the rights of the Unit Owners as provided in the Act.

4. **RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.**

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof shall exist, except as provided herein with respect to termination of the Condominium.

5. **OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS.**

5.1 Percentage Ownership and Shares. The undivided percentage 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 "C" attached hereto and made a part hereof.

5.2 Voting. An Owner or Owners of a single Residential Unit or Parking Garage Unit, shall collectively be entitled to one (1) vote which vote shall be cast by the Voting Member. If a Unit is owned by one person, his right to vote shall be established by the record title to his Unit. 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 filed with the Secretary of the Association. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or the Vice-President and attested by the Secretary or the Assistant Secretary of the said corporation, and filed with the Secretary of the Association. If a Unit is owned by a partnership, it shall designate a general partner or other partner entitled to cast the Unit's vote by executing a certificate to be filed with the Secretary of the Association, signed by a General Partner. If a Unit is owned by a limited partnership, it shall designate a member entitled to cast the Unit's vote by executing a certificate to be filed with the Association, signed by the Managing Member. The person designated in any such certificate shall be known as the Voting Member. If, for a Unit owned by more than one person

or by a corporation, such certificate is not on file with the Secretary of the Association, the vote of the Unit shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the person entitled to cast the vote for the Unit, except if said Unit is owned jointly by a husband and wife. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or until a change occurs in the ownership of the Unit. If a Unit is owned jointly by a husband and wife, the following provisions are applicable: (a) They may, but they shall not be required to, designate a Voting Member; (b) If they do not designate a Voting Member, and 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; (c) Where they do not designate a Voting Member, and only one is present at a meeting, the person present may cast the Unit's vote.

A person or entity owning more than one Residential Unit may be designated as a voting member for each such Residential Unit which it or he owns. The Developer shall be deemed an Owner and voting member of and for each unsold Unit. Failure by all Owners of a Residential Unit to file the aforementioned written statement with the Secretary prior to or at a members' meeting will result in depriving such Owners of a Residential Unit of a vote at such meeting.

6. **AMENDMENTS.** Except as elsewhere provided herein, amendments may be effected as follows:

- 6.1 **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the voting interests of Units of the Association. Except as elsewhere provided, approvals must be by affirmative vote of:

Unit Owners in excess of sixty-six and two-thirds (66-2/3%) percent of the Units in the Condominium and by not less than sixty-six and two-thirds (66-2/3%) percent of the Board of Directors of the Association; or

Unit Owners in excess of seventy-five (75%) percent of the Units in the Condominium.

- 6.2 **Amendments Prior to Turnover.** During the period of Developer control, the Declaration, Articles of Incorporation or the By-Laws of the Association may be amended by the Developer to correct an omission or error, or to effect any other amendment, except that this procedure for amendment may not be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing.
- 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 with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the Public Records of Collier 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 in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which the Owner of a

Condominium Parcel shares the Common Expenses of the Condominium and owns the Common Elements and Common Surplus of the Condominium, (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens on the Unit, shall join in the execution of the amendment and the amendment is otherwise approved by in excess of seventy five (75%) percent of the Voting Interest of Unit Owners. No amendment may be adopted which would materially affect the rights or interests of mortgagees of Units, without the consent of said mortgagees which are materially affected in each instance, which consent may not be unreasonably withheld. The acquisition of property by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units and accordingly, shall not constitute a Material Amendment.

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 without the consent of said Developer in each instance; nor shall an amendment make any change in the Sections hereof entitled "Insurance," "Reconstruction or Repair after Casualty," or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment; without limiting the generality of the foregoing, nor shall any amendment change the provisions of "Sections 23.17 thru 23.19" without the consent of the Developer as any amendment to said Sections would affect the Developer's rights and responsibilities. The provisions of this Section 6.4 may not be amended in any manner.

No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted and the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to affect such change whatsoever, except for an amendment to affect a Material Amendment, which must be approved, if at all, in the manner set forth in this Section 6.4. 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, without the consent of the Developer in each instance.

7. **MAINTENANCE, REPAIR AND REPLACEMENT OF UNITS AND LIMITED COMMON ELEMENTS AND COMMON ELEMENTS.** The Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than as specifically set forth in this Declaration and other than certain of the Limited Common Elements that are required elsewhere herein to be maintained by the Unit Owner) and the cost and expense of all of such protection, maintenance, repair and replacement shall be a Common Expense. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or

nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows the entrance door, garage door, if any and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment serving solely the applicable Unit, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The Unit Owner shall also maintain, repair and replace, at his, her or its sole, cost and expense, all portions of any hurricane shutter(s) that the Unit Owner may install, upon prior written approval of the Association, including such portion of the Common Elements, if any, to which the hurricane shutter(s) is attached, (in the event the hurricane shutter(s) is attached to any Common Element, the Common Element to which the hurricane shutter(s) is attached shall become a Limited Common Element upon the attachment of said hurricane shutter(s), whereupon the maintenance, repair and replacement of such Limited Common Element shall be the responsibility of the Unit Owner) which the Unit Owner installs, which cost and expense shall also include the cost and expense of removal and/or reinstallation by the Association of the hurricane shutter(s) if necessary or required in order for the Association to maintain, repair, replace or protect the Common Elements or Association Property.

- 7.1 Common Elements. Except to the extent expressly provided to the contrary herein (i.e., as to certain of the Limited Common Elements) all maintenance, repairs and replacements in or to the Common Elements, including but not limited to the Life Safety Systems 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. For purposes hereof, Common Elements shall include all portions of the Condominium (except interior wall surfaces) contributing to the support of the Building, which portions shall include, but not be limited to, the outside walls of the Building, chasing and load bearing columns; all of such portions of the Units contributing to the support of the Building; all conduits, chases, chase areas, ducts, plumbing, air-conditioning, wiring and other facilities for the furnishing of Utility Services which are contained in the portions of the Unit contributing to the support of the Building or within interior boundary walls, and all such facilities contained within a Unit which service part or parts of the Condominium other than the Unit within which contained; and all property owned by the Association. With respect to all incidental damage caused to a Unit by the above work; all painting of exterior parapet walls, terraces, and patios; the work shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners.
- 7.2 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment, fixtures or other items of property which service a particular Unit or Units and are Limited Common Elements thereof, (except the portions to be maintained, repaired or replaced by the Association pursuant to the provisions hereof), shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, provided said equipment, fixtures or other items are Limited Common Elements. The Unit Owner shall maintain, repair and replace at his, her or its sole cost and expense, all portions of any hurricane shutter(s) which service said Unit Owner's Unit and are appurtenant thereto, including such portion of the Common Elements, if any, to which the hurricane shutter(s) is attached (in the event the hurricane shutter(s) is attached to any Common Element, the Common Element to which the hurricane shutter(s) is attached shall become

a Limited Common Element upon the attachment of said hurricane shutter(s), which Limited Common Element maintenance, repair and replacement shall be the responsibility of the Unit Owner) which cost and expense shall also include the cost and expense of removal and/or reinstallation by the Association of the hurricane shutter(s) if necessary or required in order for the Association to maintain, repair, replace or protect the Common Elements or Association Property (none of the foregoing is intended to give any Unit Owner the right to install any hurricane shutters except in accordance with the provisions and restrictions contained in this Declaration). The Association shall have the right to collect and enforce such costs and charges as elsewhere provided in accordance with this Declaration and applicable law. Notwithstanding anything contained herein to the contrary, the Association shall not be liable or responsible for any loss or damage occasioned to any floor, ceiling, or wall covering of said areas which may be damaged as a result of the Association's obligation of maintenance, repair or replacement under this Article 7, and the Unit Owner shall bear the cost of any such loss or damage.

The air-conditioning and heating systems servicing a Unit are Limited Common Elements and each Unit Owner shall maintain, repair and replace, at his own expense, any portions of such systems within the Unit, including, but not limited to, filters, compressors, condensers, motors, fans and related parts.

Each Unit Owner shall have the obligation to maintain, repair, and replace at the Unit Owner's expense all fans, stoves, hot water heaters, refrigerators, appliances, equipment, and fixtures within that Unit Owner's Unit and each Unit Owner shall also have the obligation to maintain, repair, and replace, at the Unit Owner's expense, all connections and facilities within the Unit which provide, or are required to provide, Utility Services to the Unit.

Unit Owners shall not decorate or change the appearance or color of any portion of the exterior of the Building including, without limitation, doors and porches, patios, lanais, or terraces of the Unit, and a Unit Owner shall secure the prior written approval of the Association with respect to the color, type of material, setting material and other product and installation specifications, for the installation or replacement of any flooring on any, patios, lanais or terraces, prior to the installation of any of the same.

Unit Owners shall promptly report to the Association any defects in, or the need for repairs to, any Common Elements or Limited Common Elements that the Association is required to maintain, repair or replace hereunder.

No Unit Owner other than the Developer shall make any alterations in the portions of the Building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the Building or impair any easement.

A Unit Owner may not screen or enclose or modify any exterior terrace, lanais, patio or porches within the Building and there shall be no modification of screen cages except with the prior written approval of the Association. In addition, a Unit Owner may not install exterior lighting on the walls or ceilings of any such, terrace, lanais or patio.

Any expense for the maintenance (excluding painting, as provided above), repair or replacement (including but not limited to lawn care maintenance, landscaping, care of trees, shrubs or plants, if applicable) relating to Limited Common Element, patios, lanais, terraces, screen cages on terraces, lanais or patios, or planters shall be paid for by the owner of the Unit to which the, patio, lanais, terrace, or planter is appurtenant, and shall not be treated as a Common Expense of the Association.

All Parking Spaces, unless and until the exclusive right to use the same is assigned to a Unit Owner, shall be Common Elements and, upon such assignment to a Unit Owner, the parking space shall become a Limited Common Element. Notwithstanding that such assigned Parking Spaces are Limited Common Elements, the Association shall perform all maintenance, repair or replacement of such assigned Parking Spaces and all costs and expenses for such maintenance, repair or replacement shall be a Common Expense of the Association.

The railings on the balconies, terraces, shall be Common Elements of the Units, however, the maintenance repair or replacement of all such railings on the balconies, terraces and lanais shall be prepared by the Association and all costs and expenses for such maintenance, repair or replacement shall be a Common Expense of the Association.

- 7.3 Cost of Remedial Work. In the event that Association performs any remedial work on a Unit pursuant to this Article or any other provision herein, applicable covenants or deed restrictions, the costs and expenses thereof shall be deemed a charge under of this Declaration and may be immediately imposed by the Board of Directors of the Association. In order to discourage Unit Owners from abandoning certain duties hereunder for the purpose of forcing one of the aforesaid entities to assume same, and, additionally, to reimburse same for administrative expenses incurred, the applicable entity may impose a surcharge of not more than thirty-five percent (35%) of the cost of the applicable remedial work, such surcharge to be a part of the aforesaid charge. No bids need to be obtained for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the Association in its sole discretion.

The Association shall have a cause of action against Unit Owners to secure payment to the Association by Unit Owners of all charges, costs and expenses to the Association that cannot be secured as assessments, regular or special, under F.S. 718.116. The charge shall bear interest at the highest lawful rate and shall carry with it costs and attorney's fees including costs and attorney's fees including costs and fees on appeal, incurred in collection.

8. **ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY THE ASSOCIATION.**

Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of One Hundred Thousand (\$100,000.00) Dollars 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 not less than sixty-six and two-thirds (66-2/3%) percent of the total votes of the Members of the Association present in person or by proxy at a meeting called for that purpose at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate One Hundred Thousand (\$100,000.00) Dollars or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

9. **ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNER.**

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any substantial addition, material alteration or improvement in or to the Common Elements, the Unit or any Limited Common Element, including, but not

limited to, the installation of hurricane shutters, window boxes, screens, sliding glass doors, enclosure of, terrace area, awnings, hot tubs, trellises, satellite dish or antennae, except to the extent specifically required to be permitted by law, or any other change to the physical appearance of the Building or, terraces, patio areas and roof areas. No Unit Owner shall make any addition, alteration or improvement in or to the interior of the Unit without the prior written consent of the Board of Directors and without prior payment to the Association of a plan review fee in an amount to be determined by the Board of Directors. Any and all requests for electrical, mechanical and structural additions, alterations and improvements must be submitted with plans prepared and sealed by the appropriate professional (*i.e.*, architect, engineer, etc.) 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 within thirty (30) days after such request and all sealed plans and additional information requested are received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Association, through action of the President, may extend the thirty (30) day review period to meet unforeseen or emergency circumstances. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer, the Declarant and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof as may be required by the Association.

Unit Owners may install Developer approved or Board approved hurricane shutters conforming to Board-adopted hurricane shutter specifications adopted by the Board, upon the prior written consent of the Board or Developer. With regard to the installation of hurricane shutters, the Board of Directors shall adopt hurricane shutter specifications for the Building, which specifications shall comply with the applicable governmental building code including without limitation all local City of Fort Lauderdale building codes, and which shall include, but not be limited to, color, style and other factors deemed relevant by the Board of Directors. Unit Owners shall be responsible for properly installing their hurricane shutters when weather conditions so require. Notwithstanding the foregoing, no hurricane shutters may be placed over window or door openings of a Unit until such time as there is a tropical storm watch or hurricane watch issued by the National Weather Center or other recognized weather forecaster for Collier County. All hurricane shutters must be removed within forty-eight (48) hours after such watch or warning has been lifted. The Association shall have the right, but not the obligation, to install or remove such approved hurricane shutters, whether on or within the Common Elements, Limited Common Elements, Units or Association Property, upon the issuance of a hurricane warning, or in order to preserve and protect the Condominium Property and Association Property, in the Association's sole discretion, for any Unit in which the Unit Owner is absent or has not installed said shutters, without the Unit Owner's permission. The installation, replacement, and maintenance of hurricane shutters in accordance with the specifications adopted by the Board shall not be deemed a material alteration or substantial addition to the Common Elements, and same shall only require Board approval. The Association shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board of Directors of the Association.

The Board may appoint an architectural control committee to assume the foregoing functions on behalf of the Board and to make recommendations to the Board.

- 9.2 Weight and Sound Restrictions. Other than as to bathrooms and balconies which are not physically located over and/or above the living areas of another Unit, hard and/or heavy surface floor coverings, such as tile, wood, marble, stone, and the like, will not be permitted in the Unit or Limited Common Elements unless installation of such materials is in accordance with the Rules of the Association and prior notice is given to the Association. All other areas of the Unit are to receive sound absorbent, less dense floor coverings, such as carpeting. A request for use of a hard and/or heavy surface floor covering in any location in the Unit, other than bathrooms and balconies, must be submitted to the Board of Directors of the Association and also meet applicable structural and sound abatement requirements. Also, the installation of any improvement or heavy object must be submitted to in advance and approved in writing by the Board of Directors of the Association, and be compatible with the structural design of the Building.

Prior to the installation of hard surfaced flooring, the Unit Owner must provide the Association with technical data for the complying weight and thickness of the sound control underlayment product that meets or exceeds the Association's standards and minimum requirement for sound control underlayment as adopted by the Board of Directors of the Association, from time to time. The Board reserves the right to revise or modify the standards and minimum requirements for sound control underlayment from time to time. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Additionally, the Board will have the right to specify the exact material to be used on balconies and terraces. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations after notice to the Unit Owner. The Association shall have the right to charge a Unit Owner for the removal of any materials which are in violation of the sound control standards and shall also be entitled to a lien on the Condominium Parcel as provided in Section 718.116(5)(b), Florida Statutes. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

- 9.3 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems. Association shall not make any additions, alterations or improvements to the Life Safety Systems without the prior consent of the appropriate governmental authority if so required. No lock, padlock, hasp, bar, chain or other devise or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever or by the Association without the Association obtaining the consent of the applicable governmental authority having jurisdiction over same. Locks on unit service entry doors shall be of the "non-self locking" type and must require the use of a key to lock from the stairwell side. All means of egress must permit unobstructed travel at all times. No barrier including, but not limited to personalty, shall impede the free movement ingress and egress.

- 9.4 Additions, Alterations or Improvements by Developer. The foregoing restrictions of this Section 9 shall not apply to Developer owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (i) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements, and the combining of all or any part of any number of Units that are adjacent to each other into one Unit); and (ii) expand, alter or add to all or any part of the recreational facilities. Any amendment to this Declaration (and any zoning or other governmental approvals required in connection therewith) required by a change made by the Developer pursuant to this Section 9.3 shall not be deemed a Material Amendment, and no such amendment shall be deemed to be a material altering of this Declaration in a manner that is adverse to Unit Owners or prospective Unit Owners (contract purchasers of Units) under the Act or the rules and regulations adopted with respect thereto. This section shall not apply to matters under Section 718.110(4) or 718.110(8), Florida Statutes.
10. **CHANGES IN DEVELOPER OWNED UNITS.** The Developer reserves the right to make alterations or improvements in the interior design or layout of any Developer owned Units, and in any Common Elements within or adjacent to the Units as necessary to implement such changes to the Unit; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units shall not be changed by reason thereof and if any such change results in an amendment that is deemed to be a material amendment, same shall be adopted in accordance with Section 6.
11. **OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION; POWERS AND DUTIES.**
- 11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (respectively, Exhibits "D" and "E" annexed hereto), as amended from time to time. In addition, the Association shall have (i) all 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 the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act; as well as (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:
- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or at any time as necessary to prevent damage to the Common Elements or to a Unit or Units. Unit Owners shall be required to deposit a Unit key with the Association in order to provide to the Association access to the Unit as contemplated herein.
 - (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, convey, lease, maintain, repair, replace and mortgage the Association Property.
 - (c) The power to acquire title to property upon the vote of a 66 2/3% of all the voting interests of the Units (for the purchase of Units at a foreclosure sale no Unit Owner approval is required); to make and collect Assessments and other charges against Unit Owners and to otherwise hold, regulate, administer, convey, lease, maintain, repair, replace and mortgage the Association Property, including the right to

grant, modify or move easements which are part of or cross the Common Elements or Association Property.

- (d) The duty to maintain accounting records according to good accounting practices, which shall be open for inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (e) 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 Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

"Any agreement for professional management of the Condominium, or any other contract providing for services of the developer or affiliated party, may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on 90 days or less written notice."

- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Units and the Condominium Property.
- (h) The power to charge a fee for the exclusive use of Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner being granted, by the Association, a right to such exclusive use.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise.

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

11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the

Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. Further, the Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.

11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required 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 all record Owners of the Unit is specifically required by this Declaration or by law. The decision of a Unit Owner may be made by written consent or disapproval.

11.5 Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

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. Additionally, the Board of Directors of the Association shall establish an annual budget, in advance, for each fiscal year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, maintenance and management of the property encumbered including, but not limited to, recreational facilities, whether or not contiguous to the Lands of the Condominium, to provide enjoyment, recreation or other use or benefit to the Condominium Unit Owners in such form and in such manner as may be deemed by the Board of Directors to be in the best interests of the Association. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of 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 a reserve for (if required by law) 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, and applicable rules and regulations of the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

13. COLLECTION OF ASSESSMENTS.

13.1 Liability for Assessments.

- (a) A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while that person is the Unit Owner. In the case of a voluntary conveyance, the Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Condominium Parcel and proceed in the same manner as provided herein and in the Act, as amended from time to time, for the collection of unpaid Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- (b) Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvements Assessments" upon the following terms and conditions:
- (i) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
 - (ii) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.
 - (iii) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board.

- 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 date due

until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act (as the Act may be amended from time to time) on Assessments and installments thereof not paid when due. All payments upon account shall be first applied to interest, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection and then to the Assessment. The foregoing method of applying payments shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. The lien is effective from and shall relate back to the recording of this Declaration. However, as to an Institutional First Mortgagee of record, the lien is effective as of the date of the recording of a claim of lien in the Public Records of Collier County, Florida stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner of the Condominium Parcel or any other person claiming an interest in the Condominium Parcel. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon payment in full, 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 unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the remainder of the budget year in which a claim of lien has been filed to be accelerated (or if acceleration to such extent is prohibited by the Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such amount shall thereupon be immediately due and payable on the date the claim of lien is filed. In the event the amount of such installments changes during the period for which Assessments were accelerated, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

Except as may be otherwise provided by applicable law, the order of priority of liens hereunder shall be tax liens, first mortgage liens, liens for Association Assessments and liens for other Condominium Assessments.

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

- 13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pending of the foreclosure action, the Association is entitled to the appointment of a receiver to collect such rental.
- 13.5 First Mortgagee. The liability of an Institutional First Mortgagee on a Unit, or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the lesser of:
- (a) The Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
 - (b) One percent (1%) of the original mortgage debt.

As to a Unit acquired by foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonable discoverable by the mortgagee.

An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 13.6 Developer's Maintenance Guarantee. The Developer has guaranteed that the Assessments for Common Expenses of the Condominium imposed upon the Unit Owners other than Developer shall not increase over the amount set forth in the Statement of Guaranteed Assessments attached as Exhibit "12" to the Developer Prospectus, commencing on the date the first Residential Unit in the Condominium is conveyed to a purchaser by the Developer and ending on the date that is three (3) months from the date of such conveyance. ("Initial Guarantee Period"). During the Initial Guarantee Period, the Developer will not be required to make payments for Assessments attributable to Units owned by the Developer, including but not limited to the full funding of the reserves unless properly waived, but, instead, will be obligated to pay any amount of Common Expenses incurred during that period and not produced by the Assessments at the guaranteed level receivable from other Unit Owners. The foregoing provisions are pursuant to Florida Statutes Section 718.116(9)(a). After the Initial Guarantee Period, the Developer shall have the option, but not the obligation, to extend the guarantee for up to six (6) additional three-month periods commencing at the expiration of the Initial Guarantee Period. If the

Guarantee Period expires, then the Developer shall pay Assessments on all Units owned by the Developer. No funds receivable from Unit purchasers or Owners and payable to the Association, including Capital Contributions or start up funds, or collected from Unit purchasers at closing, may be used for payment of such Common Expenses by the Developer on behalf of the Association prior to the expiration of the Developer's guarantee, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above.

The provisions of this Subsection 13.6 are paramount to and superior to the provisions of Subsections 5.1 and 13.1 of this Declaration as to the matters set forth in this Paragraph.

- 13.7 Condominium Working Capital Fund. A contribution to the working capital fund in the amount of one (1) monthly assessments shall be payable to the Association at the time of closing. This contributions are not to be considered as advance maintenance payments or funds of the Association, but rather as a purchaser's share of the initial expenses of the Condominium itself, such as advance insurance premiums, other prepaid premiums, rentals, utility deposits, charges for service contracts, permits and licenses. In addition to the above, the Condominium working capital fund may be used for the purposes of emergency needs, initial items and non-recurring capital expenses. Developer may be entitled to be reimbursed for certain sums advanced by it pursuant to Section 718.116, Florida Statutes.
- 13.8 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 13.9 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Association from time to time.
- 13.10 Use of Common Elements. The Association shall not charge any fee against a Unit Owner for the use of the Common Elements or Association Property unless otherwise provided for in this Declaration or by a majority vote of the Association or unless the charges relate to expenses incurred by a Unit Owner having exclusive use of the Common Elements or Association Property.
14. **INSURANCE.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:
- 14.1 Purchase, Custody and Payment.
- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida, or by a surplus lines carrier reasonably acceptable to the Board.
 - (b) Mortgagees. No policy or insurance coverage shall impair the security of the Primary Institutional First Mortgagee without its consent.
 - (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. The Unit Owners and their mortgagees shall be deemed additional insureds.

- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (as hereinafter defined in Subsection 14.6) (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

14.2 Coverage. A Unit-Owner controlled Association shall use its best efforts to maintain adequate insurance in compliance with the provision of the Act and covering the following, and if the Association is Developer-controlled, the Association shall exercise due diligence to obtain and maintain such insurance:

- (a) Casualty. The Building including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, unit floor coverings, unit wall coverings and unit ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and also excluding hurricane shutters, and the following equipment if it is located within a Unit and the Unit Owner is required to repair or replace such equipment: electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacement of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit and compressors that service an individual Unit, whether or not located within the Unit boundaries or any other item, personal property, fixture, appliance or equipment permitted to be excluded from the Condominium's insurance policy pursuant to the Act, as same may be amended or renumbered from time to time] and all Improvements located on the Common Elements from time to time, together with all fixtures, Building service equipment, personal property and supplies constituting the Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than one hundred (100%) percent of the full insurable replacement value thereof, excluding foundation and excavation costs and a commercially reasonable deductible as determined by the Board. Such policies may contain reasonable deductible provisions as determined 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 and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Primary Coverage. Every casualty or hazard insurance Policy, issued or renewed to protect the Condominium shall provide primary coverage for:
- (i) All portions of the Condominium Property located outside the Units;
- (ii) The Condominium Property located inside the Units as such Property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they executed at the time the Unit was initially conveyed; and
- (iii) All portions of the Condominium Property for which this Declaration requires coverage.
- (c) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (d) Worker's Compensation and other mandatory insurance, when applicable.
- (e) Flood Insurance, if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (f) Fidelity Insurance. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time, or in an amount not less than the minimum sum required by law. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. All persons providing management services to the Association and required to be licensed pursuant to law shall provide the Association with a certificate of insurance covering such persons under a fidelity bond in an amount not less than the minimum sum required by law. The Association shall bear the cost of, or reimburse for the cost of, bonding.
- (g) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (h) Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable, including, but not limited to Directors and Officer's liability insurance..

- (i) Adequate Insurance. Notwithstanding anything to the contrary contained herein, adequate insurance may include reasonable deductibles as determined by the Board of Directors.

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) 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, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- 14.3 Additional Provisions. Upon and after turnover of control of the Association to non-developer Unit Owners all policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice of all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Unit and for their personal liability arising in the use of their own Unit and other areas of the Common Elements for which they have exclusive use. Each Unit Owner shall provide the Association with a copy of a binder, a policy or other proof satisfactory to the Association of said insurance coverage.

Every hazard insurance policy issued or renewed to an individual Unit Owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual Unit Owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property located within the boundaries of the Owner's Unit, which is excluded from the coverage provided by the Association as required herein, shall be insured by the individual Unit Owner.

- 14.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may, but need not, be designated by the Board of Directors. The Insurance Trustee must be either a financial institution or trust company with FDIC Insurance and with offices in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes

elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but such shares need not be set forth on the records of the Insurance Trustee:

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

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

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs may be held by the Association to defer operating expenses or be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in subsection 14.6 above, and 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.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

14.8 Damage Not Covered. The cost to repair any damage caused to a Common Element or other property owned by the Association by a Unit Owner or Unit

which is not covered by insurance, including lack of coverage due to a deductible, shall be the responsibility of and shall be paid by said Unit Owner. The cost of any damage to a Unit not covered by insurance caused from a source outside the Unit, which source of damage is under the control and management of the Association, and said damage is through no negligence on the part of the Association, shall be borne by the Unit Owner sustaining the damage.

- 14.9 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 14.10 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, 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 not covered by insurance carried by the Association.
- 14.11 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.12 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder, which Insurance Trustee shall meet the requirements contained in Section 14.6 herein. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.13 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
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 Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

Notwithstanding the above, if seventy five (75%) percent or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning eighty (80%) percent of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for such appropriate relief as may be allowed by law instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their

respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages 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 that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the 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 and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.
- (a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than One Hundred Thousand (\$100,000.00) Dollars, 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 (if appointed) 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 are the responsibility of the Association is more than One Hundred Thousand (\$100,000.00) Dollars, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and shall promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect 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. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 15.4 Assessments for Reconstruction and Repair. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements. Costs on account of damage to the Optional Property shall be charged to each Unit Owner in proportion to the cost of repairing the damage suffered by each Unit Owner thereof, as determined by the Association.
- 15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. CONDEMNATION.

- 16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special charge 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 eminent domain also 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 with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion and discretion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Owner of the Unit. The Association shall have the right to collect and enforce such costs and charges as elsewhere provided in accordance with this Declaration, pursuant to Section 13 and applicable law.

- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall be restated as follows:
- (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
 - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Subsection 16.4(c) hereof (the "Percentage Balance"); and

- (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Subsection 16.4(c) hereof, by the Percentage Balance.

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

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

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares are effected pursuant hereto by reason of the taking. If there is a mortgage on 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 and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of 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 Residential Unit shall be used as a single family residence only, except as otherwise herein expressly provided. A Residential Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families,

provided that the Unit Owner or other permitted occupant must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee of such partnership, (iv) the fiduciary or beneficiary of such trust, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be. Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families who reside with them: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder, employee or designee of a corporate lessee or sublessee, (iii) a partner, employee or designee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. Under no circumstances may more than one family reside in a Unit at one time. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons for each bedroom contained in a Unit, including convertible portions of any Units. The term "temporary occupancy" as used herein shall mean occupancy of the Unit not to exceed thirty (30) consecutive days. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this Subsection 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices or management services.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren, or a group of natural persons related to each other by blood or legally related to each other by marriage or adoption. As used herein, "guests" or words of similar import shall include only those persons who have a principal residence other than the Unit. Unless otherwise determined by the Board of Directors of the Association, a person(s) occupying a Unit for more than thirty (30) consecutive days without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Section 17.1 and the Board of Directors of the Association shall enforce, and the Unit Owners shall comply with, same with due regard for such purpose.

- 17.2 Children. Children shall be permitted to reside in Units, subject to the provisions of Subsection 17.1 above.
- 17.3 Pets. Each Unit Owner (regardless of the number of Owners), may maintain two (2) domestic dogs, or two (2) domestic cats as pets in a Unit but in any event a total of no more than two (2) animals per unit, provided said pets are not kept, bred, or maintained for any commercial purpose and does not become a nuisance or annoyance to neighbors. Notwithstanding the foregoing, no Unit Owner may keep in or on the Condominium Property any dangerous breed dogs, including but not limited to pit bulls, rottweilers, chows, etc. Unit Owners must pick up all solid wastes of their pets and dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit. Pets may not be kept in the Common Element or in a Limited Common Element, nor be walked through or kept in the lobby, or other public areas of the Condominium. No pets shall be allowed at any time in any lakes, parks unless otherwise designated, pool or pool areas. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Without limiting the generality of Section 18 hereof, violation of the provisions of this Subsection shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require, through order of the Board, any pet to be permanently removed from the Condominium Property.

- 17.4 Alterations. Without limiting the generality of Subsection 9.1 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, satellite dish or antenna, machinery, pools, whirlpools or saunas or air-conditioning units or in any manner changing the appearance of any exterior portion of the Building. Without limiting the generality of Subsection 9.1 hereof, no Unit Owner shall cause or allow any mechanical, electrical or structural alterations, improvements or changes to the interior of any Unit without submitting professional sealed and prepared plans to the Association and without obtaining the prior written consent of the Association (in the manner specified in Subsection 9.1 hereof).
- 17.5 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.
- 17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.
- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Subsection 17.7.
- 17.8 Leases. No portion of a Residential Unit (other than an entire Residential Unit) may be rented. The Association must approve all lease applications and leases. A Unit Owner shall be prohibited from leasing the Residential Unit for more than three (3) separate terms within a one (1) year period with a minimum term of thirty (30) days. For all leases with terms of less than seven (7) months, the Unit Owner shall pay all applicable taxes to the appropriate local or state authority and shall obtain any landlord permit that may be required by the City of Naples. The Association shall have the right to require a surety deposit, a lease approval fee of \$50.00 and that a substantially uniform form of lease be used and copies of all Leases shall be provided to the Association. The lease shall include a provision permitting the Association authority and standing to evict any tenant of a Unit Owner who is in breach or violation of the lease agreement or this Declaration or the rules and regulations of the Association. The lease or rental shall not release the Unit Owner from any obligation under this Declaration, and either the lessee or the Unit Owner shall have the right to use the facilities and Common Elements to the exclusion of the other party. Regardless of whether or not expressed in the applicable lease, if any, all Unit Owners shall be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of the tenant(s) or occupant(s) (whether or not subject to a lease) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all rules and regulations of the Association. All leases shall comply with and be subject to the provisions of this Declaration, the By-Laws, and the Act and the provisions of same shall be deemed expressly incorporated into any

lease of a Residential Unit. This Subsection shall also apply to subleases and assignments and renewals of leases of a Residential Unit. For the purposes of this Subsection 17.8, a corporate Unit Owner may allow its officers, directors, designees, and employees to use the Unit without it constituting a lease; provided, however, that corporate ownership may not be used to circumvent the rules and regulations covering the leasing of Units in the Condominium. This Subsection 17.8 may be amended only by the affirmative vote of eighty (80%) percent of all Unit Owners.

- 17.9 Exterior Improvements; Landscaping. Without limiting the generality of Subsections 9.1 or 17.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces, or windows of the Building (including, but not limited to, awnings, signs, screens, window tinting, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside the Unit, other than potted plants.

Roof coverings or awnings by screening, or otherwise of, lanais, terraces or patios is prohibited. No articles except suitable furniture, plants and planters shall be placed on, terraces, lanais, patios or similar areas. No objects shall be hung from, terraces or lanais. No cloth, clothing, laundry, rugs, mops or any other article(s), shall be hung upon, or shaken from doors, windows, terraces, lanais or exterior walls. No Unit Owner may alter the configurations of such terraces, lanais, or hang plants, draperies, screens or other items therefrom, other than suitable potted plants.

Notwithstanding anything to the contrary contained herein or in the Association rules, any Unit Owner may display one portable, removable United States Flag in a respectful way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veteran's Day may display, in a respectful way, portable, removable official flags, not larger than 4½ feet by 6 feet.

- 17.10 Use of Flammables. No flammable, combustible or explosive fluids, chemicals or other substances or propane tanks may be kept in any Residential Unit or on the Common Elements. No fires, barbecue grills, hibachis, or cooking devices or other devices which emit smoke or dust shall be allowed on any terrace or lanais unless approved by Collier County.
- 17.11 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 17.12 General Instructions on Unit Owner Modifications.

- (a) Any change made to the exterior of any Unit must be approved by the Association.
- (b) Unless otherwise approved by the Association, no Unit Owner may:
1. Change any color of the front door on a Unit.
 2. Add a front screen door to any unit.
 3. Change any exterior lighting fixtures.
 4. Change exterior patio color or texture.
 5. Install a front porch decoration (except for seasonal decorations).
 6. Install front porch fencing or gating.
 7. Install flower bed fencing.

8. Install any exterior wire or penetrate the exterior of the Unit or the roof for any reason.
 9. Penetrate the firewall between Units.
 10. Change any exterior door or exterior door locks unless they are the same type and color as the existing doors and locks.
 11. Install a front door screen.
- (c) No Unit Owner shall modify a garage so as to convert it to a living space.
- (d) No Unit Owner shall modify or relocate air conditioning condensing Units nor install window air conditioners or window fans.
- (e) No satellite dish equipment or antenna equipment may be attached to a Unit. Free standing satellite dishes of 18 inches or less may be placed upon patios only and must be installed by a licensed contractor.

17.13 Effect on Developer; Association. The restrictions and limitations set forth in this Section 17, except Subsections 17.1, 17.2, 17.3 and 17.8, shall not apply to the Developer nor to Units owned by or leased to the Developer. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.

APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS.

18. **COMPLIANCE AND DEFAULT.** Each Unit Owner and every occupant of a Unit 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, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

18.1 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 his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

18.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance to hire an attorney to make a charge against the Unit Owner and Unit for the costs of such reasonable attorneys' fees incurred in requiring performance and/or compliance of the Unit Owner. In addition, the Association has the irrevocable right of access to each Unit during reasonable hours, when necessary, for the maintenance extermination of pests, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

18.3 Fines. In the event a Unit Owner or occupant fails to observe and perform any of the provisions of the Declaration, the By-Laws, the Articles of

Incorporation of the Association, applicable reasonable rules and regulations of the Association in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Condominium Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner or tenant, signed by an officer of the Association in accordance with the procedures established in the rules and regulations of the Association.

- 18.4 **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, 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 from the other party the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- 18.5 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, 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 right to do so thereafter.
19. **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 eighty five (85%) percent of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. When the Board of Directors of the Association intends to terminate the Condominium, or dissolve the Association, the Board of Directors shall so notify the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the "Division") before taking any action to terminate the Condominium or the Association.
- In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be owned in common by the Unit Owners in the same individual shares as each Unit Owner previously owned in the Common Elements, 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, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of Collier County. Upon recordation of the termination certificate, the Association within thirty (30) business days shall notify the Division of the termination and the date the certificate was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded, and shall provide the Division a copy of the recorded termination certificate notice certified by the clerk.
20. **RESTRICTIONS AND EASEMENTS.** The real property submitted to Condominium ownership herewith is subject to conditions, limitations, restrictions, dedications, reservations of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for Utility Service for the United States Post Office authorities, and any right of the United States of America, State of Florida, or any governmental agency as to any submerged lands and as to any lands lying below the natural, ordinary high water line of the surrounding bodies of water, for pedestrian and vehicular purposes, easements for Utility Service and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and the said Developer shall have the right

to grant such easements and designate the beneficiaries thereof for such time as it determines in its sole discretion; and thereafter the Association shall be empowered to grant such easements on behalf of its members. During the period of time that the Developer has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. Except for easements already granted, the right to grant the foregoing easements shall be subject to said easements not structurally weakening the building improvements upon the Condominium Property nor unreasonably interfering with the enjoyment of the Condominium Property by the Association's Members.

It is understood that certain portions of the lands, from time to time, may be set aside and designated for use as an interior private road system, pedestrian walkways, automobile parking areas and landscaped areas for the common use and benefit of all Unit Owners or tenants, their mortgagees, and guests, invitees, employees and the Developer. It is the intention of this Declaration that the portions of the Common Elements of this Condominium which must be utilized for the above-described purposes be subject to the various easements created by this Declaration and all Exhibits attached hereto and that the general reservation herein of said easements would fulfill said intent. If, however, the intended creation of any or all of the aforesaid easements should fail by reason of the fact that as of the date hereof there is no grantee in being who has the capacity to take and hold the said easements by virtue of the reservation and grants of easements attempted to be made herein, then and in such event, any easement, license or right-of-way, not deemed to be created as aforesaid shall be considered as having been granted directly to the Association for the purpose of allowing the original party to whom the easement or license or right-of-way was originally granted the benefit of said easement or license of right-of-way.

The Developer and/or the Association shall have the right and authority at any time without the consent of any other party to dedicate, convey or grant easements and execute and deliver bills of sale or warranty deeds or execute such other documents as may be necessary, or do any or all of the foregoing in connection with the water and sewage distribution and facilities located on or under the Condominium Property. The foregoing shall be for the purpose of conveying, dedicating or granting easements to the appropriate municipal authorities for said water and sewage distribution system and facilities so that such authorities will maintain and operate the said water and sewage distribution system and facilities.

An easement, whether heretofore or hereafter created under and pursuant to this Declaration shall constitute a covenant running with the Land of the Condominium, and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use and purpose and shall survive the termination of the Condominium. The Unit Owners of this Condominium do hereby designate the Developer and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof; Developer's right to act as attorney-in-fact for the Unit Owners shall end at turnover or when Developer is no longer offering Units for Sale in the ordinary course of business.

21. **ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS.**

21.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the Condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of any alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Institutional First Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

- 21.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.
- 21.3 The approval of a Majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially alters, or adds, a provision relating to matters described in Sections 718.110(4) and 718.110(8) Florida Statutes.
22. **COVENANT RUNNING WITH THE LAND.** All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.
23. **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) or by overnight mail or other express courier to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the 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 shall be sent by first class mail or by overnight mail or other express courier 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 or on the date sent by overnight mail or other express courier, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur. Notwithstanding anything to the contrary contained herein, notices by electronic transmission shall be allowed as provided in the By-laws of the Association or by applicable law.
- 23.2 **Interpretation.** The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

- 23.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 23.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 23.5 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, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 23.6 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 applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 23.7 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 applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 23.8 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 23.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Land as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Subsection may not be amended without the consent of the Developer.
- 23.11 Sales Activity and Developer's Rights. Until the date that the Developer has completed and sold all of its Units within the Condominium, neither the Unit Owners nor the Association shall interfere with the completion of the contemplated improvements and the sale of Units. The Developer (or its

duly authorized agents or assigns) may make such use of the unsold units and the Common Elements and the facilities within the Condominium until such date so as to facilitate such completion and sale, including, but not limited to, the maintenance of sales offices for the showing of the property and display of signs, billboards, placards, and visual promotional materials, and the maintenance of an administrative office. The Developer may use unsold Units as model Units or as sales offices for display purposes to prospective purchasers. The Developer shall have the right to use unassigned Parking Spaces for prospective purchasers and such other parties as Developer determines. The sales office personal property, model furnishings, signs and all items pertaining to sale shall not be considered Common Elements and shall remain the property of the Developer. Additionally, without obtaining consent of any Tenants of Units, Developer or its employees or agents may be allowed access to any Unit for repairs or construction necessary in Developer's opinion to complete the Units for sale.

- 23.12 VENUE. EACH UNIT OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH UNIT OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A UNIT, THAT THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN COLLIER COUNTY. DEVELOPER HAS AN OFFICE IN COLLIER COUNTY AND EACH UNIT IS LOCATED IN COLLIER COUNTY. ACCORDINGLY, AN IRREBUTTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN COLLIER COUNTY. IN ADDITION TO THE FOREGOING, EACH UNIT OWNER AND DEVELOPER AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN COLLIER COUNTY.
- 23.13 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.
- 23.14 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 23.15 Access of Developer to Building and Units and to Reports. For as long as Developer remains liable to the Condominium Association or any Unit Owner, under any warranty, whether statutory, express or implied, for any act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its agents shall have the right, in Developer's sole discretion, and from time to time upon the granting of access thereto by the Condominium Association or a Unit Owner, as the case may be, to enter the Condominium Property for the purpose of inspecting, testing and surveying same, to determine the need for repairs, improvements or replacements, so as to permit Developer to fulfill its obligations under such warranties. Failure of the Condominium Association or of a Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect.

For as long as the Developer remains liable to the Association or any Unit Owner under any warranty, whether statutory, express or implied, or for any act or omission of the Developer relative to the development, construction, sale and marketing of the Condominium, the Association shall furnish to the Developer all documentation prepared on behalf of the Association concerning the inspection, testing and surveying of the Common Elements or Units relative to analyzing such areas for compliance with all such warranties. Failure of the Association or of a Unit Owner to provide such access to reports and/or documentation shall result in the appropriate warranty being nullified and being of no further force or effect.

- 23.16 Parking Requirements. Parking requirements for the Condominium Property promulgated by the appropriate governmental authority having jurisdiction over same shall be complied with at all times.
- 23.17 Implied and Express Warranties. THE DEVELOPER EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES WITH REGARD TO ANY ASPECT OF THIS CONDOMINIUM, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT THOSE IMPLIED WARRANTIES PERTAINING TO THE DEVELOPER AS REQUIRED UNDER FLORIDA STATUTES SECTION 718.203.
- 23.18 Blocked View Trees and Shrubbery. There is no guarantee that any Unit shall have any specific view. The (i) maturation of trees and shrubbery, (ii) construction of other condominiums, or (iii) construction of any other improvement may partially or entirely block the view of each Unit. Additionally, Developer shall not be responsible for any reduction in privacy caused by the removal or pruning of trees and shrubbery within the Condominium Property. Unit Owners shall not cut down trees and shrubbery nor plant additional trees and shrubbery within the Common Elements.
- 23.19 Construction Matters. All Units and their appurtenant Common Elements have been or will be sold without any Developer warranties whatsoever except as provided in the Act (to the extent such warranties are not effectively disclaimed and remain in effect, if at all). As to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s), Limited Common Elements, or the Common Elements including, without limitation, failure to build in accordance with any particular plans or specifications or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that the party or parties buying same shall comply with all requests of Section 558, Florida Statutes. Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 23.19.
- 23.20 Mold and Mildew. Given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Condominium Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildews, toxins and/or fungi and to have released the Developer from any and all liability resulting from same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the Unit, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Unit Owner, by acceptance of a deed, or otherwise acquiring title to a Unit, shall be deemed to have agreed that Developer is not responsible, and hereby disclaims any responsibility for any illness or allergic reactions which may be experienced by the Unit Owner, its family members and/or its or their guests, tenants and invitees as a result of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination.

23.21 Unit Square Footage. Each Unit's percentage shall be calculated based upon the total square footage of each Unit in uniform relationships to the total square footage of each other Unit in the Condominium pursuant to Section 718, Florida Statutes. Notwithstanding the provisions of the above to the contrary each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Developer's promotional materials or otherwise. Without limiting the generality of this Section 23.21 Developer does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit; provided, however, that nothing contained herein shall be deemed to limit or waive any rights of the Owners under Section 718, Florida Statutes.

23.22 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property or upon any other Lot within The Properties, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Developer does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed this 22 day of July, 2005.

Signed, sealed and delivered
in the presence of:

Jean Seibold
Witness signature
Jean Seibold
Witness print name

CYPRESS NAPLES, LTD.
a Florida limited partnership

By: [Signature]
Joseph Papasso
Authorized Representative

STATE OF FLORIDA)
)
) :ss
)
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, personally appeared Joseph Papasso, Authorized Representative, ~~as~~ of Cypress Naples, Ltd., a Florida limited partnership, as personally known to me () or who produced _____ as identification, and he acknowledged the execution thereof to be his free act and deed, on behalf of the company and for the uses and purposes therein mentioned.

WITNESS my hand and official seal in the county and state last aforesaid, this 22 day of July, 2005.

Jean Seibold
NOTARY PUBLIC, State of Florida

My Commission Expires:

900947_1.DOC
7/26/2005



Jean Seibold
Commission # DD306503
Expires April 4, 2008
Bonded Troy Fair - Insurance, Inc. 800-366-7019

JOINDER

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

IN WITNESS WHEREOF, POSITANO PLACE AT NAPLES IV CONDOMINIUM ASSOCIATION, INC., has caused these presents to be signed in its name by its proper officers and its corporate seal to be affixed this 7 day of April, 2006

Signed, sealed and delivered in the presence of:

POSITANO PLACE AT NAPLES IV CONDOMINIUM ASSOCIATION, INC. a not-for-profit corporation

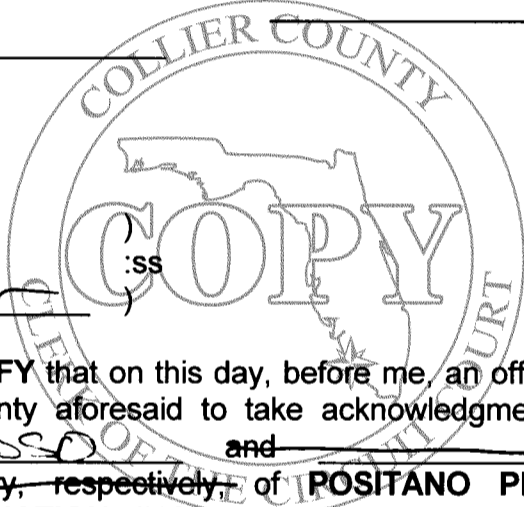
[Signature]
Witness signature

Mark Lynn
Witness print name

Witness signature

Witness print name

By: [Signature]
_____, President



(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF Collier)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state aforesaid and county aforesaid to take acknowledgments, personally appeared Joseph Lapasso and _____, as President and Secretary, respectively, of **POSITANO PLACE AT NAPLES IV CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, personally known to me () or who produced _____ as identification, and they acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned, that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

7 WITNESS my hand and official seal in the county and state last aforesaid, this day of April, 2006.

[Signature]
Notary Public, State of Florida

Notary Public – print name

My Commission Expires:



JOINER AND CONSENT OF MORTGAGEE

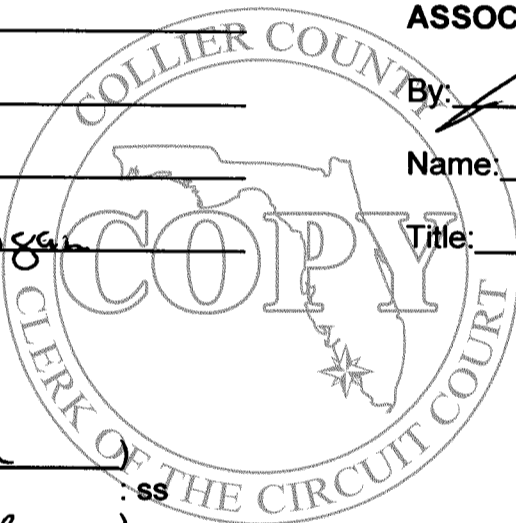
WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, successor by merger to SouthTrust Bank, an Alabama banking corporation, being the holder of that certain Mortgage, recorded as described on Exhibit "A" attached hereto of the Public Records of Collier County, Florida, hereby consents to the filing of the foregoing Declaration of Condominium for Positano Place at Naples IV, a Condominium, in accordance with the applicable provisions of Florida Statutes, Chapter 718.

Signed, sealed and delivered in the presence of:

Janice Chong
Signature
JANICE CHONG
Print Name
Pat M. Dunigan
Signature
Patrick M. Dunigan
Print Name

WACHOVIA BANK, NATIONAL ASSOCIATION

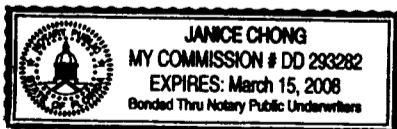
By: [Signature]
Name: Bart Free
Title: VP



(Corporate Seal)

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 18th day of August, 2005, by Bart Free as Vice President of Wachovia Bank, National Association, a national banking association, on behalf of the association. He/~~She~~ is personally known to me or has produced _____ as identification.



Janice Chong
Notary Public
Name of Notary Printed

My Commission Expires: _____

EXHIBIT "A"

LEGAL



Exhibit A

Legal Description

Positano Place at Naples IV, a Condominium

A CONDOMINIUM LYING IN SECTION 18,
TOWNSHIP 49 SOUTH, RANGE 26 EAST,
COLLIER COUNTY, FLORIDA.



EXHIBIT "B"

DESIGNATION OF UNITS, SURVEY, PLOT PLAN, AND GRAPHIC
DESCRIPTION OF IMPROVEMENTS



RHODES & RHODES LAND SURVEYING, INC.

JOHN SCOTT RHODES, P.S.M.

THOMAS E. RHODES, P.S.M.

1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110

PHONE (239) 593-0570


FAX (239) 593-0581

Positano Place at Naples IV, A Condominium

CERTIFICATE OF SURVEYOR

The undersigned, being a surveyor authorized to practice in the State of Florida, pursuant to Section 718.104(4) (e), Florida Statutes, hereby certifies that the construction of the improvements comprising the Units within the buildings of Positano Place at Naples IV, a Condominium, is substantially complete, so that Exhibit "B" to the Declaration of Condominium, together with Provisions of the Declaration of Condominium describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements and of each unit within said buildings can be determined from these materials. The undersigned further certifies that all planned improvements, including but not limited to, landscaping, utility services and access to the units within said condominium, and common element facilities serving said buildings have been substantially completed.

RHODES & RHODES LAND SURVEYING, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 6897


Thomas E. Rhodes, Sr.
Professional Surveyor and Mapper
State of Florida, License Number 5854

NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER

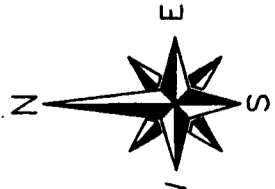
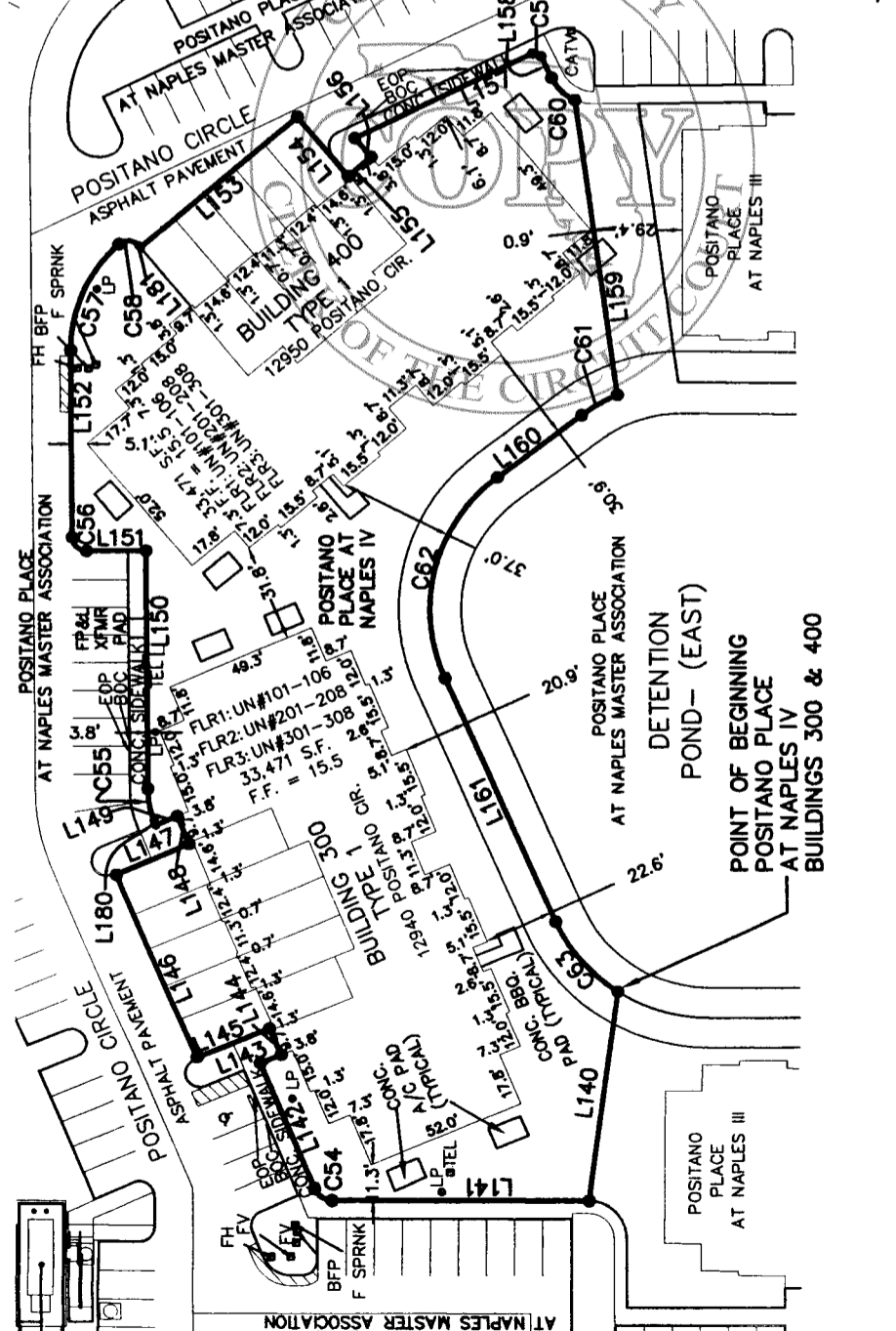
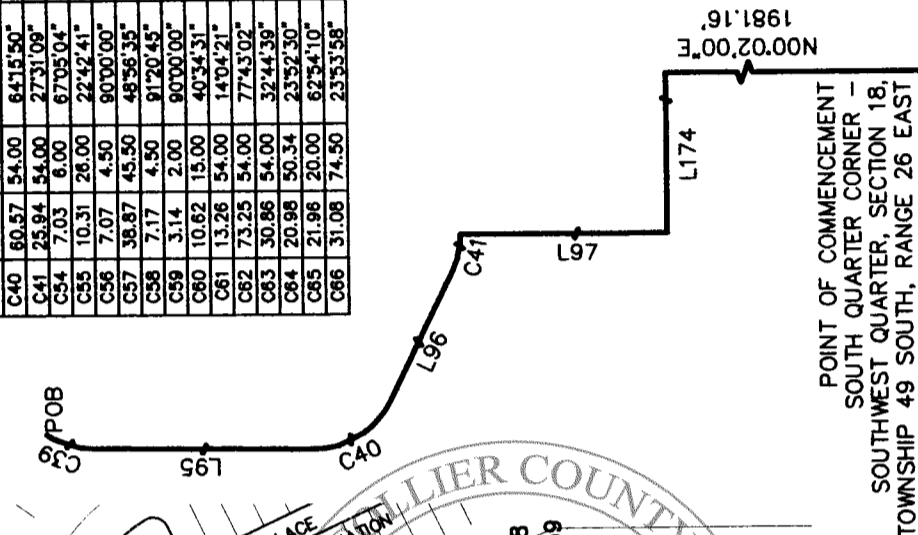
R&R FILE NO. 2004-1920
DATE: 3/28/06

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA

CURVE TABLE			LINE TABLE	
CURVE LENGTH	RADIUS	DELTA	LINE LENGTH	BEARING
C39	30.86	32.44.39"	L95	137.23 N00°20'25"E
C40	50.57	54.00 64°15'50"	L96	88.18 N63°55'26"W
C41	25.94	54.00 27°31'09"	L97	169.00 N00°05'59"W
C54	7.03	6.00 67°05'04"	L140	69.56 N82°17'47"W
C55	10.31	26.00 22°42'41"	L141	82.48 N00°07'28"E
C56	7.07	4.50 90°00'00"	L142	44.73 N67°12'32"E
C57	38.87	45.50 48°56'35"	L143	7.28 S22°47'28"E
C58	7.17	4.50 91°20'45"	L144	9.67 N67°17'11"E
C59	3.14	2.00 90°00'00"	L145	25.16 N22°45'37"W
C60	10.62	15.00 40°34'51"	L146	65.33 N67°14'23"E
C61	13.26	54.00 14°04'21"	L147	25.22 S22°45'37"E
C62	73.25	54.00 77°43'02"	L148	9.67 N67°17'11"E
C63	30.86	54.00 32°44'39"	L149	7.41 N22°47'58"W
C64	20.98	50.34 23°52'30"	L150	76.87 N89°54'43"E
C65	21.96	20.00 62°54'10"	L151	19.00 N00°05'17"W
C66	31.08	74.50 23°53'58"	L152	60.80 N89°54'43"E
			L153	65.85 S39°46'06"E
			L154	25.15 S50°13'54"W
			L155	9.67 S39°46'06"E
			L156	8.09 N50°12'03"E
			L157	63.34 S25°22'34"E
			L158	7.73 S64°37'26"W
			L159	96.17 S82°17'56"W
			L160	33.67 N36°27'15"W
			L161	85.16 S65°49'43"W
			L162	83.22 N89°54'38"W
			L163	37.18 N00°17'45"W
			L164	19.35 S64°42'06"W
			L165	65.00 N25°17'54"W
			L343	20.49 N64°42'06"E
			L166	63.37 N25°22'34"W
			L167	50.83 N64°42'06"E
			L168	27.66 S87°38'40"E
			L169	106.50 S24°28'31"E
			L170	56.49 S00°00'28"E
			L174	384.77 S89°54'21"W
			L180	1.54 N67°12'02"E
			L181	0.73 S50°12'03"W
			L201	67.00 S00°40'54"E
			L202	40.33 S89°19'06"W
			L203	67.00 N00°40'54"W
			L204	40.33 N89°19'06"E

CURVE TABLE			CHORD BEARING	
CURVE LENGTH	RADIUS	DELTA	CHORD	BEARING
C39	30.86	32.44.39"	30.44	N16°42'44"E
C40	50.57	54.00 64°15'50"	57.44	N31°47'30"W
C41	25.94	54.00 27°31'09"	25.69	N77°41'00"W
C54	7.03	6.00 67°05'04"	6.63	N33°40'00"E
C55	10.31	26.00 22°42'41"	10.24	N78°33'22"E
C56	7.07	4.50 90°00'00"	6.36	N44°34'43"E
C57	38.87	45.50 48°56'35"	37.70	S85°37'00"E
C58	7.17	4.50 91°20'45"	8.44	S04°31'40"W
C59	3.14	2.00 90°00'00"	2.83	S19°37'26"W
C60	10.62	15.00 40°34'51"	10.40	S44°20'10"W
C61	13.26	54.00 14°04'21"	13.23	N29°25'05"W
C62	73.25	54.00 77°43'02"	67.76	N75°18'48"W
C63	30.86	54.00 32°44'39"	30.44	S49°27'24"W
C64	20.98	50.34 23°52'30"	20.82	N11°17'50"W
C65	21.96	20.00 62°54'10"	20.87	S95°35'36"E
C66	31.08	74.50 23°53'58"	30.85	S11°55'21"E



ASBUILT
EXHIBIT "B"

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
PHASE PLAN & BOUNDARY SURVEY

THIS INSTRUMENT PREPARED BY:
THOMAS E. RHODES, P.S.M.#5854
RHODES & RHODES
LAND SURVEYING, INC.

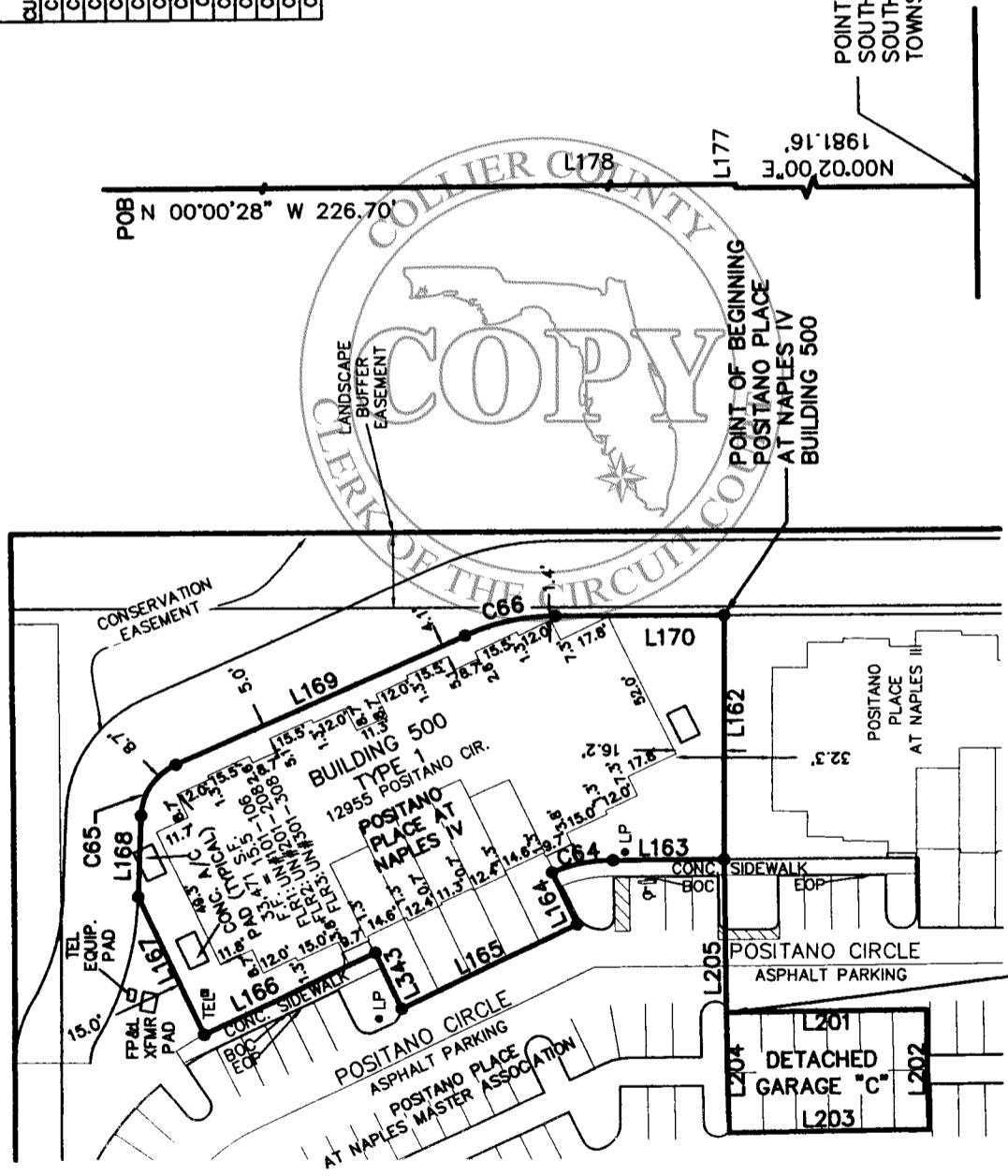
1440 RAIL HEAD BOULEVARD, #1
NAPLES, FLORIDA 34110

PHONE: (239) 593-0570 FAX: (239) 593-0581
FLORIDA BUSINESS LICENSE NO. LB 6897

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA

CURVE TABLE			LINE TABLE		
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C54	7.03	6.00	67°05'04"	6.63	N53°40'00"E
C55	10.31	26.00	22°42'41"	10.24	N78°33'22"E
C56	7.07	4.50	90°00'00"	6.36	N44°34'43"E
C57	38.87	45.50	48°56'35"	37.70	S65°37'00"E
C58	7.17	4.50	91°20'45"	6.44	S04°31'40"W
C59	3.14	2.00	90°00'00"	2.83	S19°37'26"W
C60	10.62	15.00	49°34'31"	10.40	S44°20'10"W
C61	13.28	84.00	14°04'21"	13.23	N29°25'05"W
C62	73.25	54.00	77°43'02"	67.76	N75°18'46"W
C63	30.86	54.00	52°44'39"	30.44	S49°27'24"W
C64	20.98	50.34	23°52'30"	20.82	N11°17'50"W
C65	21.96	20.00	62°34'10"	20.87	S55°35'36"E
C66	31.08	74.50	23°53'58"	30.85	S11°55'21"E
L140	69.56				N82°17'47"W
L141	82.48				N00°07'28"E
L142	44.73				N67°12'32"E
L143	7.28				S22°47'28"E
L144	9.67				N67°17'11"E
L145	25.16				N22°45'37"W
L146	65.33				N67°14'23"E
L147	25.22				S22°45'37"E
L148	9.67				N67°17'11"E
L149	7.41				N22°47'56"W
L150	76.87				N89°54'43"E
L151	19.00				N00°05'17"W
L152	60.80				N89°54'43"E
L153	65.85				S38°46'06"E
L154	25.15				S50°13'54"W
L155	9.67				S38°46'06"E
L156	8.09				N50°12'03"E
L157	63.34				S25°22'34"E
L158	7.73				S64°37'26"W
L159	96.17				S82°17'56"W
L160	33.67				N36°27'15"W
L161	85.16				S65°48'43"W
L162	83.22				N89°34'38"W
L163	37.18				N00°17'45"W
L164	19.35				S64°42'06"W
L165	65.00				N25°17'54"W
L343	20.49				N64°42'06"E
L166	63.37				N25°22'34"W
L167	50.83				N64°42'06"E
L168	27.66				S87°38'40"E
L169	106.50				S24°26'31"E
L170	56.49				S00°00'28"E
L177	2.37				N89°54'21"E
L178	195.55				N00°05'39"W
L180	1.54				N67°12'02"E
L181	0.73				S50°12'03"W
L201	67.00				S00°40'54"E
L202	40.33				S89°19'06"W
L203	67.00				N00°40'54"W
L204	40.33				N89°19'06"E
L205	51.17				S89°30'38"W

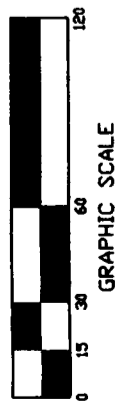
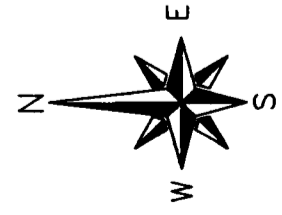


POINT OF COMMENCEMENT
SOUTH QUARTER CORNER -
SOUTHWEST QUARTER, SECTION 18,
TOWNSHIP 49 SOUTH, RANGE 26 EAST

L177
1981.16
N00°02'00"E

POINT OF BEGINNING
POSITANO PLACE
AT NAPLES IV
BUILDING 500

POINT OF BEGINNING
POSITANO PLACE AT NAPLES IV
DETACHED GARAGE "C"



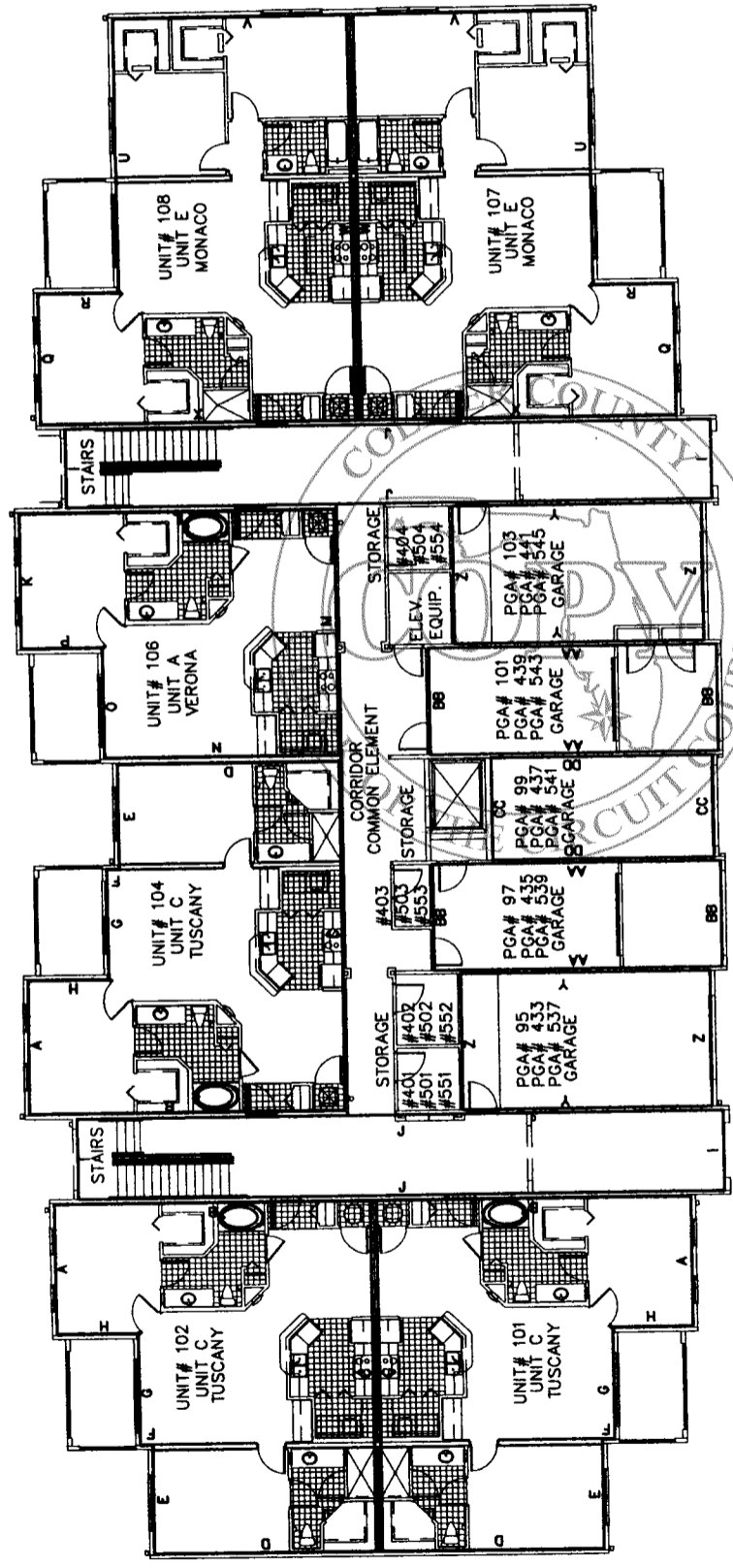
THIS INSTRUMENT PREPARED BY:
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ASBUILT
EXHIBIT "B"
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
PHASE PLAN & BOUNDARY SURVEY

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA

DIM.	PLAN	BLDG.	BLDG	BLDG
101A	14.3'	300	400	500
102A	14.3'	14.3'	14.3'	14.3'
104A	14.3'	14.3'	14.3'	14.3'
101B	33.8'	33.8'	33.8'	33.8'
102B	33.8'	33.8'	33.8'	33.8'
104B	33.8'	33.8'	33.8'	33.8'
101C	38.1'	38.1'	38.1'	38.1'
102C	38.1'	38.1'	38.1'	38.1'
104C	38.1'	38.1'	38.1'	38.1'
101D	23.8'	23.8'	23.8'	23.8'
102D	23.8'	23.8'	23.8'	23.8'
104D	23.8'	23.8'	23.8'	23.8'
101E	11.6'	11.6'	11.6'	11.6'
102E	11.6'	11.6'	11.6'	11.6'
104E	11.6'	11.6'	11.6'	11.6'
101F	1.3'	1.3'	1.3'	1.3'
102F	1.3'	1.3'	1.3'	1.3'
104F	1.3'	1.3'	1.3'	1.3'
101G	12.2'	12.2'	12.2'	12.2'
102G	12.2'	12.2'	12.2'	12.2'
104G	12.2'	12.2'	12.2'	12.2'
101H	8.7'	8.7'	8.7'	8.7'
102H	8.7'	8.7'	8.7'	8.7'
104H	8.7'	8.7'	8.7'	8.7'
I	8.7'	8.7'	8.7'	8.7'
J	69.4'	69.4'	69.4'	69.4'
K	14.3'	14.3'	14.3'	14.3'
L	33.8'	33.8'	33.8'	33.8'
M	26.3'	26.3'	26.3'	26.3'
N	25.2'	25.2'	25.2'	25.2'
O	12.0'	12.0'	12.0'	12.0'
P	8.7'	8.7'	8.7'	8.7'
107O	14.3'	14.3'	14.3'	14.3'
108O	14.3'	14.3'	14.3'	14.3'
107R	8.7'	8.7'	8.7'	8.7'
108R	8.7'	8.7'	8.7'	8.7'
107U	29.8'	29.8'	29.8'	29.8'
108U	29.8'	29.8'	29.8'	29.8'
107V	25.2'	25.2'	25.2'	25.2'
108V	25.2'	25.2'	25.2'	25.2'
107W	44.1'	44.1'	44.1'	44.1'
108W	44.1'	44.1'	44.1'	44.1'
107X	33.8'	33.8'	33.8'	33.8'
108X	33.8'	33.8'	33.8'	33.8'
Y	26.8'	26.8'	26.8'	26.8'
Z	14.7'	14.7'	14.7'	14.7'
AA	31.0'	31.0'	31.0'	31.0'
BB	11.6'	11.6'	11.6'	11.6'
CC	11.3'	11.3'	11.3'	11.3'
DD	23.8'	23.8'	23.8'	23.8'



FLOOR PLAN - BUILDING TYPE 1 -- FIRST FLOOR



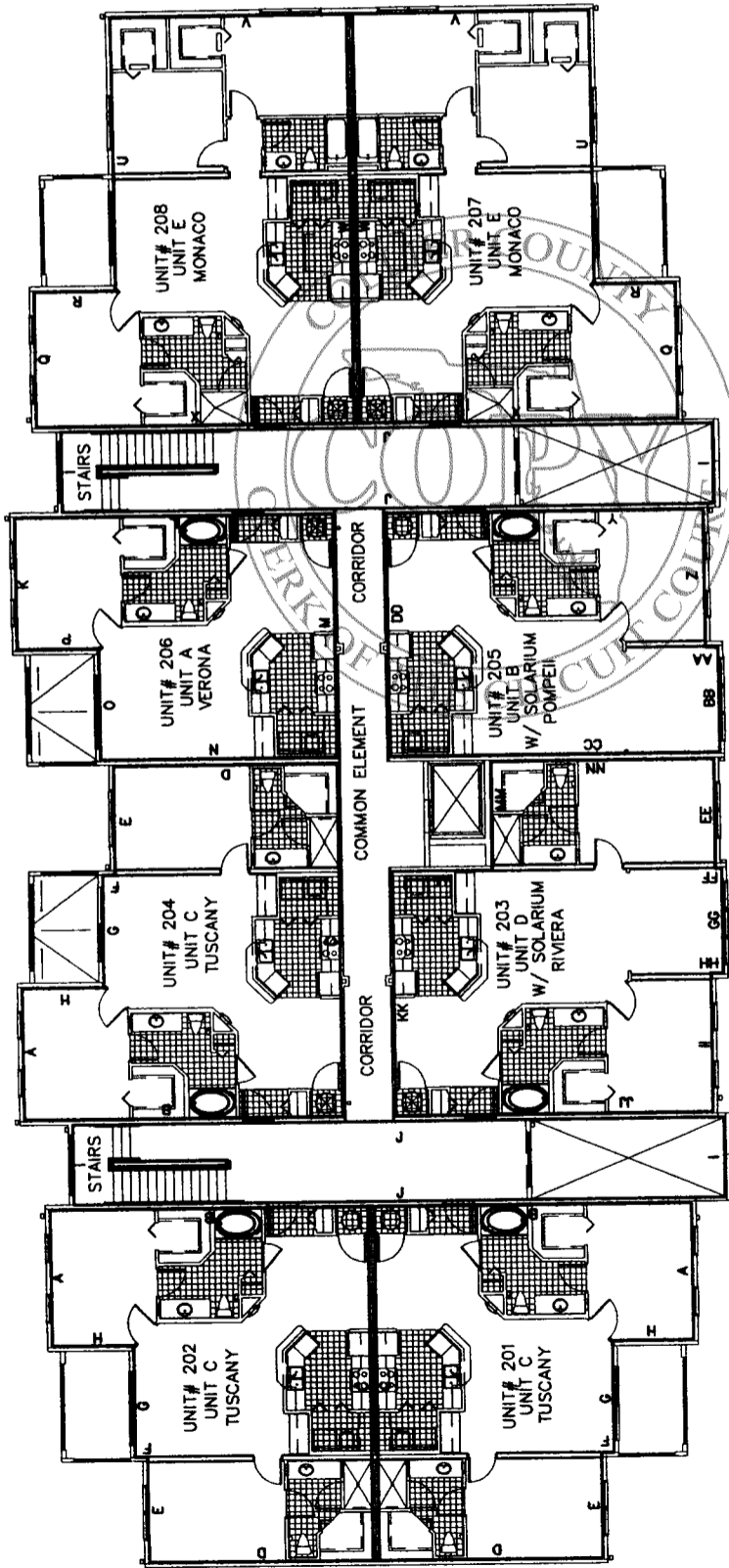
THIS INSTRUMENT PREPARED BY:
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 FLORIDA BUSINESS LICENSE NO. LB 6897

ASBUILT
 EXHIBIT "B"
 POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
 FLOOR PLAN - BUILDING TYPE 1 -- FIRST FLOOR

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA

DIM.	PLAN	BLDG. 300	BLDG. 400	BLDG. 500	DIM.	PLAN	BLDG. 300	BLDG. 400	BLDG. 500
201A	14.3'	14.3'	14.3'	14.3'	Y	33.8'	33.8'	33.8'	33.8'
202A	14.3'	14.3'	14.3'	14.3'	Z	15.1'	15.1'	15.1'	15.1'
204A	14.3'	14.3'	14.3'	14.3'	AA	1.3'	1.3'	1.3'	1.3'
201B	33.8'	33.8'	33.8'	33.8'	BB	11.3'	11.3'	11.3'	11.3'
202B	33.8'	33.8'	33.8'	33.8'	CC	35.2'	35.2'	35.2'	35.2'
204B	33.8'	33.8'	33.8'	33.8'	DD	26.3'	26.3'	26.3'	26.3'
204C	33.8'	33.8'	33.8'	33.8'	EE	11.8'	11.8'	11.8'	11.8'
201C	38.1'	38.1'	38.1'	38.1'	FF	0.7'	0.7'	0.7'	0.7'
202C	38.1'	38.1'	38.1'	38.1'	GG	11.3'	11.3'	11.3'	11.3'
204C	38.1'	38.1'	38.1'	38.1'	HH	1.3'	1.3'	1.3'	1.3'
201D	23.8'	23.8'	23.8'	23.8'	II	15.1'	15.1'	15.1'	15.1'
202D	23.8'	23.8'	23.8'	23.8'	JJ	33.8'	33.8'	33.8'	33.8'
204D	23.8'	23.8'	23.8'	23.8'	KK	26.5'	26.5'	26.5'	26.5'
201E	11.6'	11.6'	11.6'	11.6'	LL	10.7'	10.7'	10.7'	10.7'
202E	11.6'	11.6'	11.6'	11.6'	MM	11.6'	11.6'	11.6'	11.6'
204E	11.6'	11.6'	11.6'	11.6'	NN	30.5'	30.5'	30.5'	30.5'
201F	1.3'	1.3'	1.3'	1.3'					
202F	1.3'	1.3'	1.3'	1.3'					
204F	1.3'	1.3'	1.3'	1.3'					
201G	12.2'	12.2'	12.2'	12.2'					
202G	12.2'	12.2'	12.2'	12.2'					
204G	12.2'	12.2'	12.2'	12.2'					
201H	8.7'	8.7'	8.7'	8.7'					
202H	8.7'	8.7'	8.7'	8.7'					
204H	8.7'	8.7'	8.7'	8.7'					
I	8.7'	8.7'	8.7'	8.7'					
J	8.7'	8.7'	8.7'	8.7'					
K	69.4'	69.4'	69.4'	69.4'					
L	14.3'	14.3'	14.3'	14.3'					
M	33.8'	33.8'	33.8'	33.8'					
N	26.3'	26.3'	26.3'	26.3'					
O	25.2'	25.2'	25.2'	25.2'					
P	12.0'	12.0'	12.0'	12.0'					
207Q	8.7'	8.7'	8.7'	8.7'					
208Q	14.3'	14.3'	14.3'	14.3'					
209Q	14.3'	14.3'	14.3'	14.3'					
207R	8.7'	8.7'	8.7'	8.7'					
208R	8.7'	8.7'	8.7'	8.7'					
207U	17.6'	17.6'	17.6'	17.6'					
208U	17.6'	17.6'	17.6'	17.6'					
207V	25.2'	25.2'	25.2'	25.2'					
208V	25.2'	25.2'	25.2'	25.2'					
207W	44.1'	44.1'	44.1'	44.1'					
208W	44.1'	44.1'	44.1'	44.1'					
207X	33.8'	33.8'	33.8'	33.8'					
208X	33.8'	33.8'	33.8'	33.8'					



FLOOR PLAN - BUILDING TYPE 1 - SECOND FLOOR



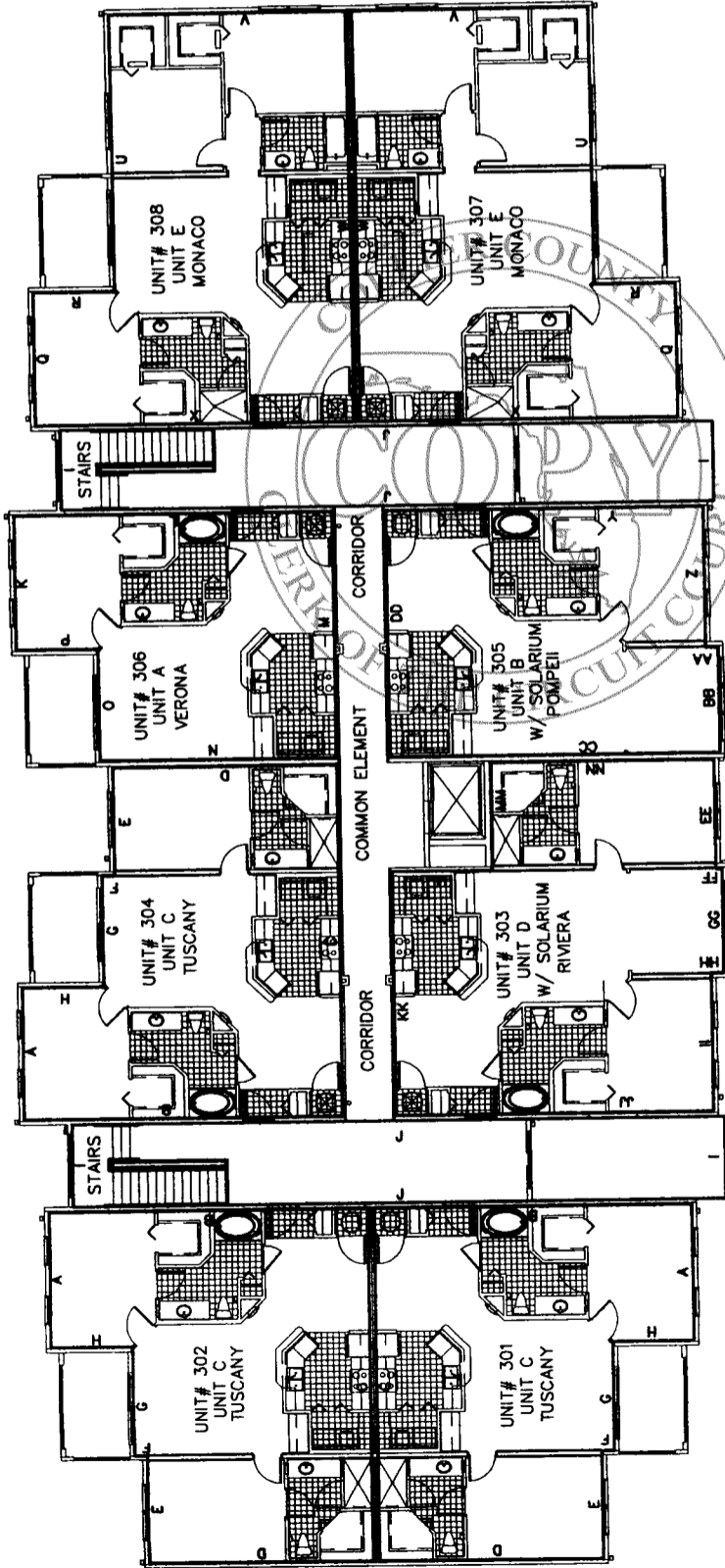
THIS INSTRUMENT PREPARED BY:
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ASBUILT
EXHIBIT "B"
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
FLOOR PLAN - BUILDING TYPE 1 - SECOND FLOOR

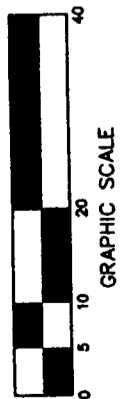
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA

DIM.	PLAN	BLDG.	BLDG.	BLDG.	BLDG.	BLDG.	BLDG.
301A	14.3'	14.3'	14.3'	33.8'	33.8'	33.8'	500
302A	14.3'	14.3'	14.3'	15.1'	15.1'	15.1'	400
304A	14.3'	14.3'	14.3'	1.3'	1.3'	1.3'	300
301B	33.8'	33.8'	33.8'	11.3'	11.3'	11.3'	PLAN
302B	33.8'	33.8'	33.8'	35.2'	35.2'	35.2'	Y
304B	33.8'	33.8'	33.8'	26.3'	26.3'	26.3'	Z
301C	38.1'	38.1'	38.1'	11.8'	11.8'	11.8'	AA
302C	38.1'	38.1'	38.1'	0.7'	0.7'	0.7'	BB
304C	38.1'	38.1'	38.1'	11.3'	11.3'	11.3'	CC
301D	23.8'	23.8'	23.8'	1.3'	1.3'	1.3'	DD
302D	23.8'	23.8'	23.8'	15.1'	15.1'	15.1'	EE
304D	23.8'	23.8'	23.8'	33.8'	33.8'	33.8'	FF
301E	11.6'	11.6'	11.6'	11.6'	11.6'	11.6'	GG
302E	11.6'	11.6'	11.6'	11.6'	11.6'	11.6'	HH
304E	11.6'	11.6'	11.6'	11.6'	11.6'	11.6'	II
301F	1.3'	1.3'	1.3'	1.3'	1.3'	1.3'	JJ
302F	1.3'	1.3'	1.3'	1.3'	1.3'	1.3'	KK
304F	1.3'	1.3'	1.3'	1.3'	1.3'	1.3'	LL
301G	12.2'	12.2'	12.2'	12.2'	12.2'	12.2'	MM
302G	12.2'	12.2'	12.2'	12.2'	12.2'	12.2'	NN
304G	12.2'	12.2'	12.2'	8.7'	8.7'	8.7'	
301H	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
302H	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
304H	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
I	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
J	69.4'	69.4'	69.4'	69.4'	69.4'	69.4'	
K	14.3'	14.3'	14.3'	14.3'	14.3'	14.3'	
L	33.8'	33.8'	33.8'	33.8'	33.8'	33.8'	
M	26.3'	26.3'	26.3'	26.3'	26.3'	26.3'	
N	25.2'	25.2'	25.2'	25.2'	25.2'	25.2'	
O	12.0'	12.0'	12.0'	12.0'	12.0'	12.0'	
P	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
307Q	14.3'	14.3'	14.3'	14.3'	14.3'	14.3'	
308Q	14.3'	14.3'	14.3'	14.3'	14.3'	14.3'	
307R	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
308R	8.7'	8.7'	8.7'	8.7'	8.7'	8.7'	
307U	17.6'	17.6'	17.6'	17.6'	17.6'	17.6'	
308U	17.6'	17.6'	17.6'	17.6'	17.6'	17.6'	
307V	25.2'	25.2'	25.2'	25.2'	25.2'	25.2'	
308V	25.2'	25.2'	25.2'	25.2'	25.2'	25.2'	
307W	44.1'	44.1'	44.1'	44.1'	44.1'	44.1'	
308W	44.1'	44.1'	44.1'	44.1'	44.1'	44.1'	
307X	33.8'	33.8'	33.8'	33.8'	33.8'	33.8'	
308X	33.8'	33.8'	33.8'	33.8'	33.8'	33.8'	



FLOOR PLAN - BUILDING TYPE 1 - THIRD FLOOR



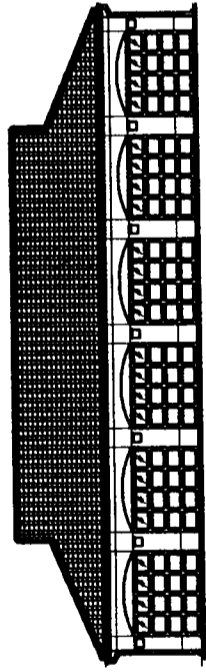
ASBUILT
EXHIBIT "B"

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
FLOOR PLAN - BUILDING TYPE 1 - THIRD FLOOR

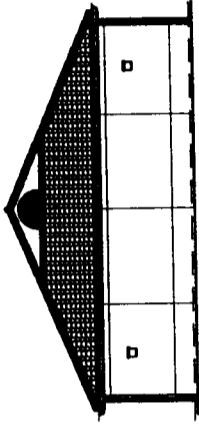
THIS INSTRUMENT PREPARED BY:
THOMAS E. RHODES, P.S.M.#5854
RHODES & RHODES
LAND SURVEYING, INC.
 1440 RAIL HEAD BOULEVARD, #1
 NAPLES, FLORIDA 34110
 PHONE: (239) 593-0570 FAX: (239) 593-0581
 FLORIDA BUSINESS LICENSE NO. LB 6897

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

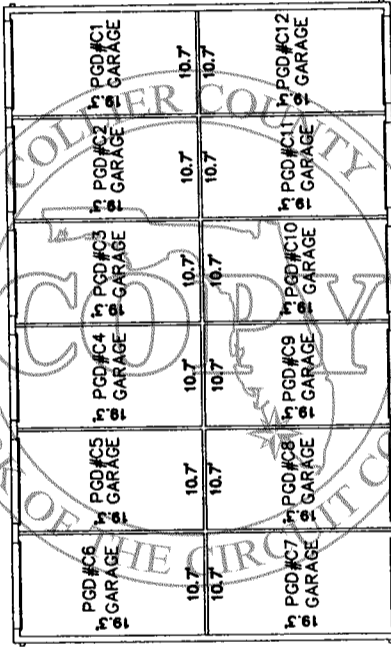
A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA



FRONT AND REAR ELEVATION
DETACHED GARAGE "C"



RIGHT & LEFT SIDE ELEVATION
DETACHED GARAGE "C"



FLOOR PLAN - DETACHED GARAGE "C"

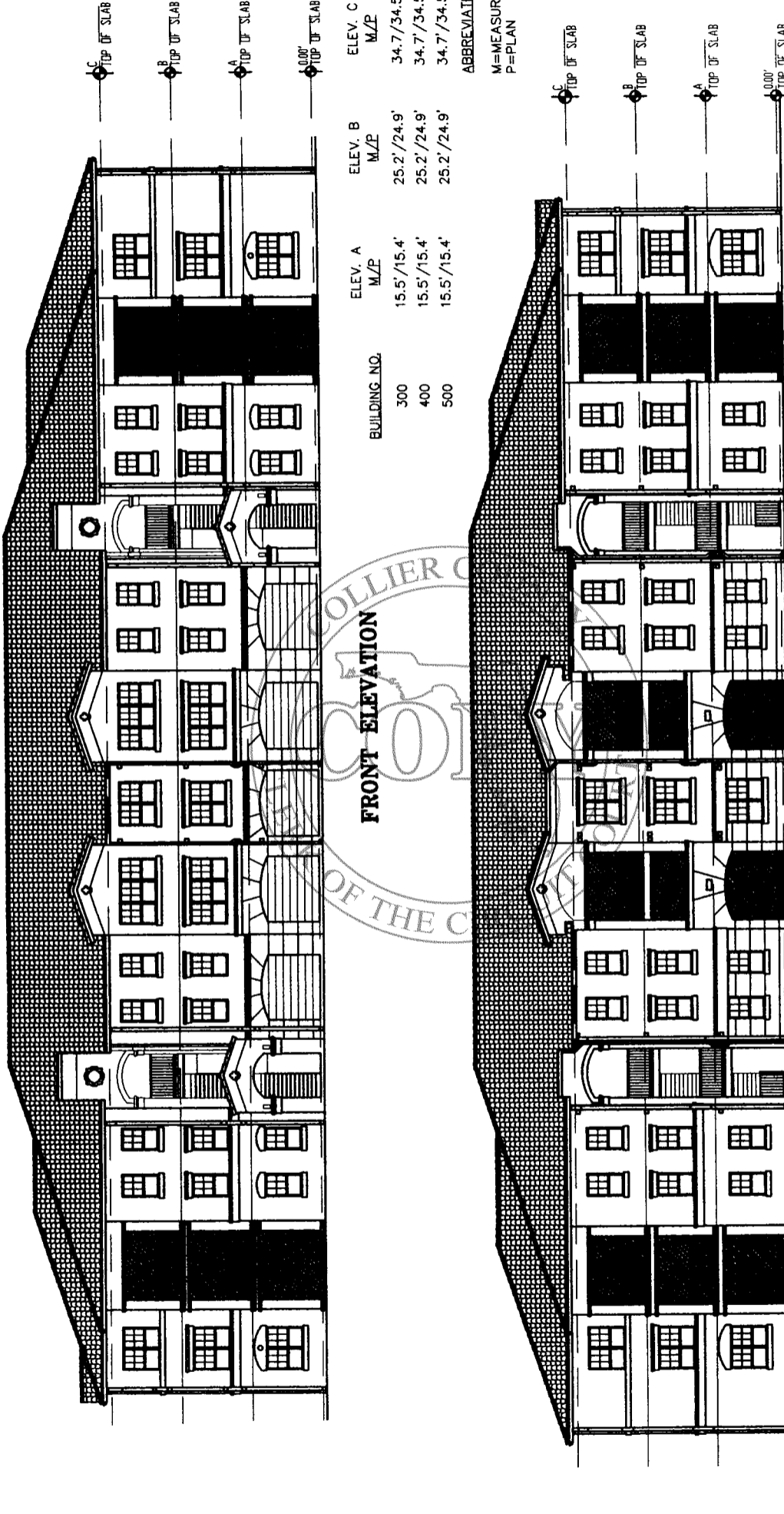


ASBUILT
EXHIBIT "B"
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
FLOOR PLAN - DETACHED GARAGE "C"
FRONT AND REAR ELEVATION - DETACHED GARAGE "C"
LEFT & RIGHT SIDE ELEVATION - DETACHED GARAGE "C"

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A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA

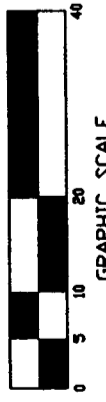


FRONT ELEVATION

REAR ELEVATION

BUILDING NO.	ELEV. A M/P	ELEV. B M/P	ELEV. C M/P
300	15.5' / 15.4'	25.2' / 24.9'	34.7' / 34.5'
400	15.5' / 15.4'	25.2' / 24.9'	34.7' / 34.5'
500	15.5' / 15.4'	25.2' / 24.9'	34.7' / 34.5'

ABBREVIATIONS:
M=MEASURED
P=PLAN



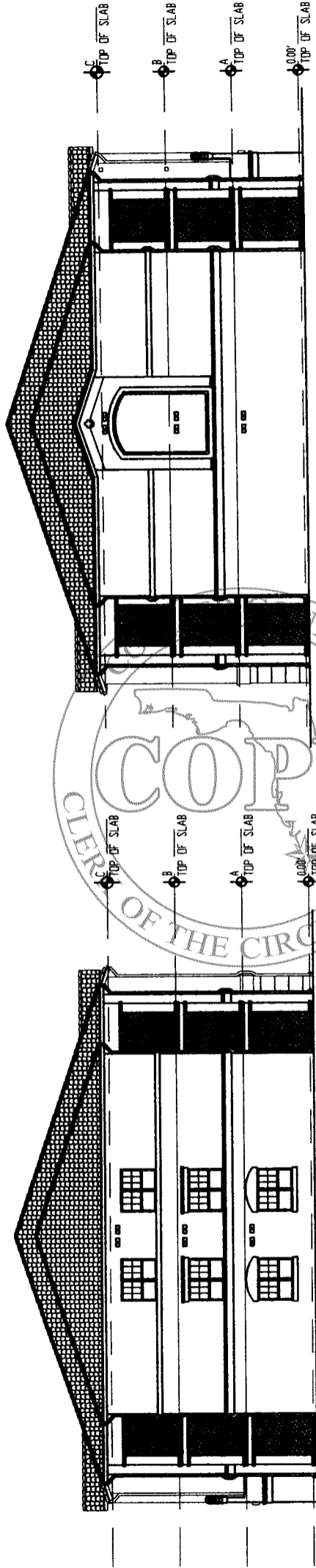
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ASBUILT
EXHIBIT "B"
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
BUILDING TYPE 1 - FRONT AND REAR ELEVATION

POSITANO PLACE AT NAPLES IV, A CONDOMINIUM

SHEET 10 OF 10

A CONDOMINIUM LYING IN SECTION 18, TOWNSHIP 49 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA



LEFT SIDE ELEVATION

RIGHT SIDE ELEVATION

BUILDING NO.	ELEV. A		ELEV. B		ELEV. C	
	M	P	M	P	M	P
300	15.5'	15.4'	25.1'	24.9'	34.7'	34.5'
400	15.5'	15.4'	25.1'	24.9'	34.6'	34.5'
500	15.5'	15.4'	25.1'	24.9'	34.6'	34.5'

ABBREVIATIONS:

M=MEASURED
P=PLAN



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•ASBUILT*
EXHIBIT "B"
POSITANO PLACE AT NAPLES IV, A CONDOMINIUM
BUILDING TYPE 1 - RIGHT AND LEFT SIDE ELEVATION

EXHIBIT "C"

UNDIVIDED PERCENTAGE SHARE IN COMMON ELEMENTS



Exhibit "C"

Positano Place at Naples IV, a Condominium

Unit Owners' Percentage Interest of Common Elements

Unit Type	Qty.	% By Type
Verona	9	9.109596698
Pompeii	6	6.957908960
Tuscany	27	37.147685939
Riviera	6	9.141201050
Monaco	18	28.633078887
	66	90.98947153

PGA Units	Qty.	% By Type
1	3	1.522385900
2	3	0.896140053
3	3	1.044877793
4	3	0.896140053
5	3	1.460066915
	15	5.819610713

PGD Units	Qty.	% By Type
C	12	3.190917752
Total	93	3.190917752

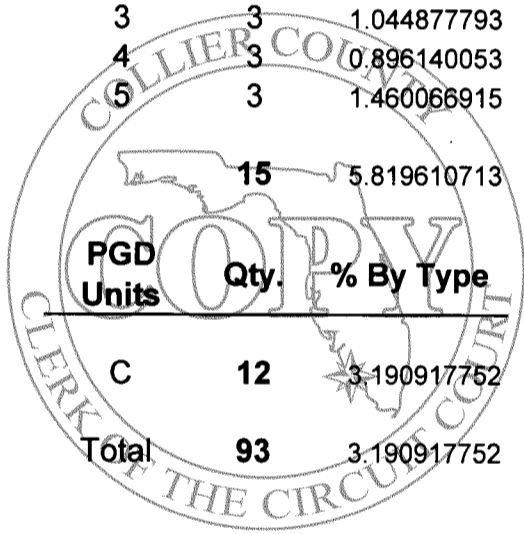


EXHIBIT "D"

BY-LAWS



EXHIBIT "D"

BY-LAWS**OF****POSITANO PLACE AT NAPLES IV 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 Positano Place at Naples IV 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 Collier County, Florida, and known as Lauderdale One Condominium (the "Condominium").
 - 1.1 **Principal Office.** The principal office of the Association is 13010 Positano Circle, Naples, Florida, 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 in Collier County, Florida, or at such other place as may be permitted by the Act from time to time.
 - 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-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles." The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration of Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. **Members.**
 - 3.1 **Annual Meeting.** The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of April following the year in which the Declaration is filed, at such time, place and date as the Board shall determine.
 - 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. Special meetings may also be called by Unit Owners in the manner provided for in the Act, including, but not limited to, the following: (i) a special meeting of the Unit Owners for purposes of recalling a member or members of the Board of Directors, in accordance with Section 718.112(2)(j) of the Act; and (ii) such special meeting of Unit Owners as set forth in Article 9 of these By-Laws.

3.3 Notice of Meeting; Waiver of Notice.

- (a) Electronic transmission means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples include, without limitation, facsimile transmission of images, and text that is sent via electronic mail between computers.

In all situations where notice is given to either the Association or to Unit Owners delivery of such notice shall be deemed to include delivery by electronic transmission, except that electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part of a recall of Board Members.

- (b) 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 at least fourteen (14) continuous days prior to the annual meeting. The notice of the annual meeting shall also 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, no 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 affidavit or the retention of a post office certificate of mailing.

In lieu of or in addition to the physical posting of notice of any meeting of the board of administration or the Unit Owners on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television serving the Condominium Association. The notice and the agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda

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/her (or his/her 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.

An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section and Section 718.112(2)(d)2 of the Act, to each Unit Owner at the address last furnished to the Association. No other proof of notice of a meeting shall be required.

Notwithstanding anything to the contrary contained herein, if a scheduled meeting is for the purpose of electing a member or members of the Board of Directors of the Association, the Association shall, not less than 60 days before the scheduled elections, mail or deliver to each owner entitled to vote, a first notice of the date of the election, and the Association shall also mail or deliver a second notice of the date of the election not less than 14 days and no more than 34 days prior to the election.

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 members.

3.5 Voting.

- (a) Number of Votes. The Owners of Units shall be entitled to cast one vote for each Residential Unit and each Parking Garage Unit. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the members themselves and shall further mean 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. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.
- (c) Voting Member. An Owner or Owners of a single Residential Unit shall collectively be entitled to one (1) vote which vote shall be cast by the Voting Member. If a Unit is owned by one person, his right to vote shall be established by the record title to his Unit. 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 filed with the Secretary of the Association. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or the Vice-President and attested by the Secretary or the Assistant Secretary of the said corporation, and filed with the Secretary of the Association. If a Unit is owned by a partnership, it shall designate a general partner or other partner entitled to cast the Unit's vote by executing a certificate to be filed with the Secretary of the Association, signed by a General Partner. If a Unit is owned by a limited liability company, it shall designate a member entitled to cast the Unit's vote by executing a certificate to be filed with the Association, signed by the Managing Member. The person designated in any such certificate shall be known as the Voting Member. If, for a Unit owned by more than one person or by a corporation, such certificate is not on file with the Secretary of the Association, the vote of the Unit shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the person entitled to cast the vote for the Unit, except if said Unit is owned jointly by a husband and wife. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or until a change occurs in the ownership of the Unit. If a Unit is owned jointly by a husband and wife, the following provisions are applicable: (a) They may, but they shall not be required to, designate a Voting

Member; (b) If they do not designate a Voting Member, and 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; (c) Where they do not designate a Voting Member, and only one is present at a meeting, the person present may cast the Unit's vote.

- 3.6 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawfully adjourned meetings thereof. All proxies must be filed with the Secretary before the appointed time of each meeting and such proxy shall be valid only for the particular meeting designated in the proxy and any lawfully adjourned meeting thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary of the Association before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. Holders of proxies need not be Unit owners. Notwithstanding the foregoing, no proxy, limited or general, shall be used in the election of Board members, either in general elections or elections to fill vacancies caused by resignation, or otherwise.

Except as specifically otherwise provided, Unit Owners may not vote by general proxy, but may vote by limited proxies in the form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes (the "Division"). Limited proxies and general proxies may be used to establish a quorum. Limited proxies must be used for votes taken to waive or reduce reserves; for votes taken to waive financial reporting requirement other than the financial report for the preceding fiscal year and any other financial reporting requirements under Section 718.111(13) of the Act; for votes taken to amend the Condominium documents; and any other matter for which Chapter 718, Florida Statutes, requires or permits a vote of the Unit Owners. No proxy, limited or general, may be used in the election of Board members provided, however, that Unit Owners other than the Developer may vote in person or by limited proxy, to fill a vacancy on the board caused by recall of a board member elected by Unit Owners other than the Developer. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given.

- 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. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.8 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:
- (a) Ballots not yet cast shall be collected;
 - (b) Call to order by President;

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

Such order may be waived in whole or in part by direction of 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.
- 3.10 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 members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of 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. During Developer control, however, no notice is required to take action without a meeting.
- 3.11 Unit Owner Participation. Unit Owners shall have the right to participate in meetings of Unit Owners with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner participation. Any Unit Owner may tape record or videotape a meeting of the Unit Owners subject to reasonable rules adopted by the Division.

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 five (5) 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, provided, however, that the number of Directors shall always be an odd

number. During Developer control, Directors need not be Unit Owners; provided, however, upon turnover, each Director, other than any Developer appointed or elected Director, shall be a Unit Owner.

4.2 Election of Directors. The 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) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Unit Owner entitled to a vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the Association not less than forty (40) days before a scheduled election. The Association shall then mail or deliver a second notice of the meeting at least fourteen (14) days and no more than thirty-four (34) days prior to the meeting, which notice must include an agenda, to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which may be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association.
- (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 vote for each of as many directors as there are vacancies to be filled. The entire membership shall vote for all of the Directors. No Unit Owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid, except for a Unit Owner who needs assistance in voting due to blindness, disability, or inability to read or write.
- (d) There shall be no quorum requirement or minimum number of votes necessary for election of Board of Directors. However, at least twenty percent (20%) of the eligible voters must cast a ballot in order for the election to be valid.
- (e) There are no nominating committees, no slates of directors, no nominations from the floor, and no write-in candidates permitted. Any unit owner who indicates an interest in running must be placed on the ballot. Election and balloting are not required unless more candidates file notices of intent to run or are nominated than there are vacancies on the Board.
- (f) The provisions of this Section 4.2 are in accordance with Florida Statutes Section 718.112(2)(d)(3) and Rule 61B-23.0021, Florida Administrative Code. In the event such statute or rule is repealed, the Board shall determine the procedure for elections of directors. In the event said statute or rule is amended, these By-laws shall be deemed automatically amended to comply with any such changes.

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 affirmative vote of

the remaining Board of Directors, even if the remaining Directors constitute less than a quorum, 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 elected by the members (other than the Developer) may be removed by concurrence of a majority of the votes of all the voting interests at a special meeting of members called for that purpose, which meeting may be called by ten (10%) percent of the voting interests, giving notice of the meeting as required for a meeting of Unit Owners, and stating the purpose of the meeting, or by written agreement signed by a majority of the owners of all Units.

If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided herein. The Board shall duly notice and hold a board meeting within five (5) full business days of the adjournment of the Unit Owner meeting to recall one or more board members. At the meeting, the Board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or shall proceed as set forth below.

If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by Florida Statutes Chapter 48 and the Florida Rules of Civil Procedure. The Board of Directors shall duly notice and hold a meeting of the Board within five (5) full business days after receipt of the agreement in writing. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or proceed as described below.

If the Board determines not to certify the written agreement to recall a member or members of the Board, or does not certify the recall by a vote at a meeting, the Board shall, within five (5) full business days after the meeting, file with the Division a petition for non-binding arbitration pursuant to the procedures in Florida Statutes Section 718.1255. For the purposes of this section, the Unit Owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. If the Association fails to comply with the order of the arbitrator, the Division may take action pursuant to Florida Statutes Section 718.501. Any member or members so recalled shall deliver to the Board any and all records of the Association in their possession within five (5) full business days of the effective date of the recall.

If the Board fails to duly notice and hold a Board meeting within five (5) full business days of service of an agreement in writing or within five (5) full business days of the adjournment of the Unit Owner recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all records and property of the Association.

If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary contained in Section 4.2 herein. If vacancies occur on the Board as a result of a recall and a majority or more of the Board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the Division.

- (c) Anything to the contrary herein notwithstanding, 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. (See, subsection 4.16 below).
- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys fees. The receiver shall have all powers and duties of a duly constituted Board of Director, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

- 4.4 Term. The Directors shall be divided into three classes and hold office for a term of three (3) years. The initial Directors shall be elected so that the term of the first class expire at the annual meeting; the term of the second class expires one year later; and the term of the third class expires two years later. At each annual election held after the classification and election of Directors, Directors shall be chosen for a full term. Directors shall hold office until their successors have been elected and have qualified, or until they are removed in the manner elsewhere provided
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and shall be noticed as provided in Section 4.6, or without further notice if so permitted by law.
- 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 forty-eight (48) hours 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) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency, Unit Owners shall have the right to attend and the right to speak with reference to all designated agenda items. The Board may adopt reasonable rules governing the frequency, duration and manner of Unit

Owner statements. Unit Owners may tape record or videotape meetings of the Board subject to rules adopted by the Division. Directors may not vote by proxy or by secret ballot at Board meetings. A vote or abstention for each Director present shall be recorded in the minutes.

- 4.7 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. For so long as the Developer is in control of the Association, special meetings of the Directors may be called by the Developer. 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 forty-eight (48) hours prior to the meeting. Special 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) continuous hours in advance for the attention of the members of the Association except in the event of an emergency, and Unit Owners shall have a reasonable right to participate. The Board may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Unit Owners may tape record or videotape meetings of the Board. Directors may not vote by proxy or secret ballot at Board Meetings. A vote or abstention for each Director present shall be recorded in the Minutes.

Notwithstanding the foregoing, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding Unit use will be considered shall be mailed or delivered to the Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the 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, 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, shall be deemed equivalent to the due receipt by said Director of notice.
- 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.

Meetings of the Board of Directors and any committee thereof at which a quorum of the members of that committee are present shall be open to all Unit Owners. The right to attend such meetings includes the right to speak with reference to all designated agenda items; provided, however, the Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Unit Owners shall have the right to tape record or videotape the meetings of the Board of Administration, subject to reasonable rules adopted by the Division.

- 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 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum or as a vote for or against the action taken at the meeting. A board member may attend a meeting by telephone conference, and in such event, his or her presence by telephone conference may be counted toward obtaining a quorum, and (s)he may vote by telephone.

A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless that Director votes against such action or abstains from voting in respect thereto, because of an asserted conflict of interest. A vote or abstention for each Director present shall be recorded in the minutes.

- 4.12 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.13 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:

- (a) Election of Chairman;
- (b) Roll Call
- (c) Proof of due notice of meeting;
- (d) Reading and disposal of any unapproved minutes;
- (e) Reports of officers and committees;
- (f) Election of Inspectors of Election;
- (g) Election of officers;
- (h) Unfinished business;
- (i) New Business;
- (j) Adjournment.

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

- 4.14 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 (7) years.
- 4.15 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 (f) and (o) of Section 5 below.

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

Meetings of any committee of the Board at which a quorum of the members of that committee are present shall be open to all Unit Owners. Written notice, which notice shall specifically incorporate an identification of agenda items, of all committee meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in an emergency.

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

The Developer can turn over control of the Association to the Unit Owners other than the Developer prior to such dates in its sole discretion. Neither the Developer nor its appointees shall be liable in any manner in connection with its resignations from the Board of Directors at the time of turnover even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than sixty (60) days notice of an election for the members of the Board of Directors. The election shall proceed as hereinbefore provided for the election of Directors in paragraph

4.2. The notice may be given by any Unit Owner if the Association fails to do so.

At the time the Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and the Unit Owners shall accept control. Simultaneously, or for purposes of Paragraph 4.16(g) below only, not more than ninety (90) days thereafter, the Developer shall deliver to the Association, at the Developer's expense, all property of the Unit Owners and of the Association which is held 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 Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of Incorporation of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute books, including all minutes, and other books and records of the Association, if any.
- (e) Any rules and regulations which have been adopted.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association through the date of the turnover. The records shall be audited for the period from the incorporation of the Association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting standards as defined by rule by the Florida Board of Accountancy, pursuant to Florida Statutes Chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes, and billings, cash receipts and related records to determine that the developer was charged and paid the proper amount of assessments.
- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment to the Condominium and in 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 his agent or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the

mechanical components serving the Improvements and the Condominium Property.

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

5. Powers and Duties. The Board of Directors shall have the powers and duties granted to it by law, the Declaration, the Act, the Articles, and these By-Laws 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) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Units and the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatory or signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association, or its designee.

- (g) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium Property.
- (k) 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.
- (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying reasonable fines against appropriate Unit Owners for violations by the Unit Owner(s), their occupants, licensee, or invitee of the Declaration, these By-Laws or the rules and regulations established by the Association. No fine shall exceed the highest amount permitted under the Act (as it may be amended from time to time), however, a fine may be levied on the basis of each day of a continuing violation, provided that the maximum fine shall not exceed the aggregate maximum permitted under the Act (as it may be amended from time to time). No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine shall become a lien upon a Unit, unless permitted by the Act (as it may be amended from time to time).
- (n) Purchasing or leasing Units for use by resident superintendents and other similar persons.
- (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 owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (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 of 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; provided always, however, the Association shall take no action authorized in this paragraph

without the prior written consent of the Developer as long as the Developer owns any Unit.

- (p) Contracting for the management and maintenance of the Condominium Property and authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted 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.
- (q) Acquiring and conveying Common Elements for the purposes of providing utility easements, right-of-way expansion or other public purpose whether negotiated or as part of the eminent domain procedure which authority can be exercised by the Board of Directors without approval of the Unit Owners.
- (r) 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 (to the extent permitted by the Act).
- (s) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (t) Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units, not to exceed the maximum amount permitted by law from time to time in any one case.
- (u) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

6. Officers.

- 6.1 Executive Officers. The initial executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need be Directors or Unit Owners), all of whom shall be elected by the Board of Directors (which may create and fill other offices as provided herein) 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. 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.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as may be required by the Directors or the President.

- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. 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 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. 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 and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- 6.6 Other. The Board of Directors may create additional offices from time to time and appoint persons to fill such offices, subject to removal at the discretion of the Board.
- 6.7 Developer Appointees. No officer appointed by the Directors designated by the Developer may be removed except as provided in Section 4.16 hereof and by law.
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. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer or officers who were not Unit Owners) shall constitute a written resignation of such Director or officer.
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.
- (a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the 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 (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing and for any other items for which the deferred maintenance expense or replacement cost exceeds \$10,000.00 or other amount, as provided in the Act, as amended from time to time. The amount of reserves shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of the Association, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the Association.

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

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be 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 the Unit Owners, and the Unit Owners shall have a reasonable right to participate. The Board may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements.
- (ii) Special Membership Meeting. If the Board adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed one hundred fifteen percent (115%) of assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled.

- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors 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 further from such computation Assessments for improvements to the Condominium Property.
- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of a majority of all voting interests.

- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 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 the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

9.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days 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 annual Assessments are not made as required, Assessments shall be presumed to have been made in the Amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 9.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

9.3 Special Assessments. The specific purpose or purposes of any special assessment, including emergency assessments, that cannot be paid from the annual assessment for common expenses, as determined by the Board of Directors, shall be set forth in a written notice of the assessment sent or delivered to each Unit Owner. The notice shall be sent or delivered before the payment or initial payment thereunder shall be due, as may be reasonable or practicable in the circumstances. Special assessments shall

be paid at the time and in the manner that the Board may require in the notice of the assessment. The funds collected under a special assessment shall be used only for the specific purpose or purposes set forth in the notice, or returned to the Unit Owners. Excess funds may be used to reduce the next year's annual assessments. On completion of the specific purpose or purposes, however, any excess funds shall be considered common surplus.

- 9.4 Late Assessments. Assessments not paid within ten (10) days from the date due may bear interest from the date when due until paid at the then highest rate allowed by law. Additionally, the failure to pay any assessment within ten (10) days from the date due shall entitle the Association to levy a late charge against the defaulting Unit Owner, in such amount as the Board may determine from time to time; provided, however, that such late charge shall not exceed the maximum amount allowed under the Act (as it may be amended from time to time).
- 9.5 Depository. The depository of the Association shall be such bank or banks or financial institution(s) in the State of Florida federally regulated and insured 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 shall be maintained separately for each Condominium, in the Association's name. Reserve and operating funds of the Association shall not be commingled. The Association shall maintain separate accounting records for the Association and for each Condominium operated by the Association. No manager or business entity required to be licensed or registered under Florida Statute 468.432, and no agent, employee, officer or director of the Association shall commingle Association funds with his, her, its or another association's or entity's funds.
- 9.6 Acceleration of Installments Upon Default. As an additional right and remedy of the Association, if a Unit Owner shall be in default in the payment of an installment of his Assessments after thirty (30) days' prior written notice to the applicable Unit Owners, the Board of Directors or its agent may accelerate the Assessments due for the remainder of the quarter (if the Assessments are made by monthly installments) and thereafter, if a claim of lien has been filed, the Assessments shall be accelerated for the balance of the budget year. The unpaid balance of the Assessments for the balance of the accelerated period shall be due and payable on the date the claim of lien is filed.
- 9.7 Enforcement of Assessments. In the event an assessment is not paid within ten (10) days of the date same shall be due and payable, the Association, through the Board of Directors, may proceed to enforce and collect said assessments from the delinquent Unit Owner in any manner provided for by the Act, the Declaration of Condominium and these By-Laws. Each Unit Owner shall be individually responsible for the payment of assessments against his Unit and for the payment of reasonable attorneys' fees and costs incurred by the Association in the collection of sums due and enforcement of any lien held by the Association.
- 9.8 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 the formula set forth in the Act, or such greater amount as may be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a Common Expense.
- 9.9 Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, according to accounting practices

normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, 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.

No later than April 1 of the year following the end of a 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 (*i.e.*, the last completed fiscal year), or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting principles. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and 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. Cost for recreation facilities;
- e. Expenses for refuse collection and utility services;
- f. Expenses for landscaping;
- g. Cost for building maintenance and repair;
- h. Insurance costs;
- i. Administrative and salary expenses; and
- j. Reserves for capital expenditures, deferred maintenance, and any other category for which the Association maintains a reserve account or accounts.

- 9.10 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.
- 9.11 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 recorded deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

The Association shall also maintain the electronic mailing addresses and numbers designated by Unit Owners for receiving notice sent by electronic transmission of those Unit Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by Unit Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

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 of the membership 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. Any proposed amendment to these By-Laws must be made by ballot or by limited proxy, delivered to the Secretary of the Association at or prior to the meeting. The approval must be:
 - (a) by not less than a majority of the votes of those members of the Association who are present or represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or
 - (b) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than 66-2/3% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
 - 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. No amendment to this Section shall be valid.
 - 12.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of 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 are recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
13. Rules and Regulations. Attached hereto as Schedule A and made a part hereof are initial rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, amend, modify or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such amendments,

modifications, or addition. Any such modification, amendment or addition need not be recorded in the Public Records of Collier County, Florida in order to be effective, however, 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 ten (10) 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. 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.
15. 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.
16. Official Records. From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:
 - (a) The plans, permits warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act.
 - (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto.
 - (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto.
 - (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto.
 - (e) A copy of the current Rules and Regulations of the Association.
 - (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.
 - (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers.
 - (h) All current insurance policies of the Association and the Condominium.
 - (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility.
 - (j) Bills of sale or transfer for all property owned by the Association.
 - (k) Accounting records for the Association and the accounting records for the Condominium, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not be limited to:
 1. Accurate, itemized, and detailed records for all receipts and expenditures.
 2. A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.

3. All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
 4. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections, which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates.
 - (m) All rental records where the Association is acting as agent for the rental of Units.
 - (n) A copy of the current question and answer sheet as described in Section 718.504, Florida Statutes.

The official records of the Association shall be maintained within the State of Florida or at such other place as may be permitted by the Act (as it may be amended from time to time).

The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times in accordance with reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying adopted by the Association. Inspections may only take place at the building in which the records are located and said records shall not be removed from said location. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member.

17. Mandatory Nonbinding Arbitration of Disputes.

- (a) Prior to the institution of court litigation, the parties to a dispute, as defined in the Act, shall petition the division for nonbinding arbitration. Arbitration shall be conducted according to rules promulgated by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.
- (b) At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.
- (c) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party may be awarded reasonable attorney's fees, the costs of the arbitration, or both, in an amount determined in the discretion of the arbitrator.
- (d) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint

for trial de novo shall be awarded reasonable court costs and attorney's fees.

(e) The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence.

(f) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorney's fees and costs incurred in enforcing the arbitration award.

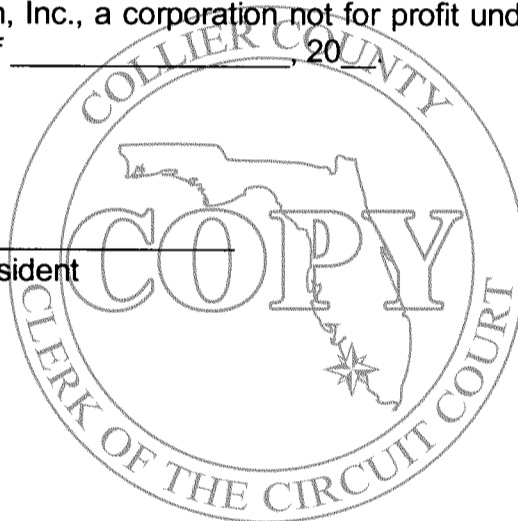
18. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Condominium Units to the applicable fire and safety code.

The foregoing was adopted as the By-Laws of Positano Place at Naples IV Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, on the ____ day of _____, 20__

Approved:

_____, President

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SCHEDULE "A"

TO

BY-LAWS**RULES AND REGULATIONS**

FOR

POSITANO PLACE AT NAPLES IV
CONDOMINIUM ASSOCIATION, INC.

The following Rules and Regulations supplement those contained in the Declaration of Condominium for Positano Place at Naples III, a Condominium (the "Declaration"). They are applicable to all occupants of Residential Units as well as to Residential Unit Owners. These Rules do not apply to Commercial Units.

1. **Antennae.** No exterior antennae shall be permitted on the Condominium Property, provided that Cypress Naples, Ltd., a Florida limited partnership (the "Developer") shall have the right (but not the obligation) to install and maintain towers, antennae, digital satellite services, radio and television lines and security systems, as well as communications systems in accordance with the term of the Declaration.
2. **Architectural Modification.** The Unit Owner shall submit a detailed construction plan (two copies) of the proposed improvements by means of the modifications, alterations and additions form to the Association. No exterior architectural modifications shall be allowed. The construction plan shall include the following:
 - (a) Plans and Specifications for all work to be performed.
 - (b) Anticipated commencement date.
 - (c) Anticipated completion date.
 - (d) Anticipated delivery schedule.
 - (e) If necessary, engineering report confirming review of structural load capacity.
 - (f) List of all contractors, sub-contractors with supervisory personnel and contact telephone numbers.
 - (g) Licenses and Certificates of Insurance meeting the insurance guidelines established by the Association.
 - (h) Building permit application as required by local governing authorities.
 - (i) Application form provided by the Association.

Upon review of the information submitted to the Association's Architectural Review Committee, the Owners will be notified in writing within 30 working days if the required has been approved or denied. Completed flooring installation requests may be submitted separately from other improvements and will be expedited.

3. **Association Employees.** Employees of the Association are not to be engaged by Unit Owners for personal errands which are not within the scope of the applicable employee's duties. The Board of Directors, through an employed manager or through a management company engaged by the Association, if any, shall be solely responsible for directing and supervising the Association's employees.
4. **Boats and Commercial Vehicles.** No boats, boat trailers, jet-skis, commercial vehicles, vehicles with commercial lettering, recreational vehicles, trailer homes, mobile homes and any vehicles for business purposes shall be permitted to be

parked overnight or stored at the Condominium, without the prior written consent of the Board of Directors, provided, however, that boats and jet-skis may be picked-up and transported on Condominium property. The Developer is specifically exempt from the foregoing provision to the extent that any of the vehicles of Developer, or its designee, are engaged in any activity relating to construction, maintenance or marketing of the Units.

5. Children. Children shall be the direct responsibility of their parents or legal guardians who must supervise them while they are within the Condominium Property. Full compliance with these Rules and Regulations and all other rules and regulations of the Association shall be required of children.
6. Cleanliness. Unit Owners shall not allow anything to be thrown, or to fall, from doors, patios. No sweeping, or other substances, shall be permitted to escape to the exterior of the building from the doors or patios. Garbage cans, laundry, dry cleaning, supplies or other articles shall not be placed on the porch patio.
7. Compliance by Unit Owners. Every Unit Owner and occupant shall comply with these Rules and Regulations as set forth herein, any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association (all as amended from time to time) to the extent applicable. Failure of a Unit Owner or occupant to comply shall be grounds for legal action which may include, without limitation, an action to recover sums due for damages, an action for injunctive relief, and any combination of such actions.
8. Compliance by Developer. To the extent permitted by applicable law, the foregoing rules and regulations shall not be applicable to the Developer, its agents, employees and contractors, or to Units owned by the Developer.
9. Destruction of Property. Neither Unit Owners, their family, guests, invitees, nor employees shall mark, mar, damage, destroy, deface or engrave any part of the Condominium property. Unit Owners shall be financially responsible for any such damage.
10. Door Locks. Unit Owners must abide by right of entry into Units in emergencies. In case of any emergency originating in, or threatening, any Unit, regardless of whether the Unit Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the building manager, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Unit Owner of each Unit under the control of the Association shall deposit a key to such Unit with the Association. If a key is not provided by a Unit Owner, the Association shall have the right to break the lock in the event of any such emergency.

The manager may have a master key to fit the door lock to all Units. The Owner shall be required to deposit a spare key, with the manager, to any and all unit locks. If a Unit Owner wants additional locks as additional security, said Unit Owner must first request the approval of the Association for same. In the event the Association's approval is obtained, then the Unit Owner shall deposit with the Association a duplicate key for each such additional lock for use in emergencies.
11. Exterior Appearance. To maintain a uniform and pleasing appearance of the exterior of the Condominium building, no awnings, canopy, screens, air conditioning unit, glass enclosures, or other projections shall be attached to, hung, displayed or placed upon the porches, outside walls, doors, windows or to the patio, roof or other portions of the Building or on the Common Elements, other than items originally installed by the Developer. This includes any type of screen or umbrella and any outdoor TV, cable, satellite or radio antennae, to the extent permitted by law No exterior lighting shall be permitted on the walls or ceilings of any patio without the prior written approval of the Association. Patios

shall not be used for the storage of any items, including but not limited to, bicycles, barbecue grills as provided by State law or exercise equipment.

12. Facilities. The facilities of the Condominium governed by the Association are for the exclusive use of Association members and their immediate families, tenants, resident house guests and guests. All guests must be accompanied by a Unit Owner or tenant.
13. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests invitees, lessees or employees, in an amount not to exceed that allowed by the Act as same may be amended from time to time, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the Owner or occupant of the reported or alleged infraction or infractions. Included in the notice shall be a statement of the provisions of the Declaration of Condominium, Association By-laws or Association Rules which have been allegedly violated; a statement of the matters asserted by the Association; and a statement of the date and time and place of the next Board of Directors meeting at which time the Owner or occupant shall present reasons why a fine should not be imposed. The Owner or occupant may be represented by counsel, shall have an opportunity to respond, to present evidence to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

(b) Hearing: The non-compliance shall be presented to a committee of other Unit Owners ("Unit Owner Committee") appointed by the Board of Directors for such purpose, after which the Unit Owner Committee shall hear reasons why a fine should not be imposed. A written decision of the Unit Owner Committee shall be submitted to the Owner or occupant by not later than fourteen (14) days after the Unit Owner Committee's meeting.

(c) Amount: The Board of Directors may impose a fine against the applicable person in such amount as may be permitted by the Association's By-Laws and by law.

(d) Committee Approval. If the Unit Owner Committee does not agree with the fine, the fine may not be levied.

(e) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.

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

(g) Infractions: Each day an infraction or violation occurs after the applicable party has received notice thereof shall be deemed to be a new infraction or violation.

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

14. Flammables. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit or on the Common Elements. No fires, barbecue grills, hibachis, or cooking devices or other devices which emit smoke

or dust shall be allowed on any patio except___in areas designed for grilling (1 per building).. Barbecue grills may be used outside of the patio enclosure within State regulated distances from the Building. No furniture other than patio furniture shall be allowed on patios.

15. Food and Beverages. Alcoholic beverages may not be consumed at the Pool Area except as specifically permitted by the Board of Directors. No glass containers shall be allowed in the pool area.
16. Hardship Relief. The Board of Directors shall have the power, but not the obligation, to grant relief to one or more Unit Owners under the particular circumstances involved from the provisions of specific restrictions contained in these rules and regulations upon written request therefrom and for good cause shown in the sole opinion of the Board.
17. Hurricane Preparation. Each Unit Owner who plans to be absent from his Unit during the hurricane season must prepare his Unit prior to departure by:
 - (a) Removing all items from his patio.
 - (b) Designating a responsible firm or individual to care for his Unit during his absence in the event that the Unit should suffer hurricane damage. Each Unit Owner shall furnish the manager with the name of such firm or individual.

Unit Owners shall not install hurricane or storm shutters without the prior approval of the Association and the Committee. Hurricane or storm shutters shall only be closed during a hurricane or severe storm warning and must be open at all other times. The Board of Directors shall have the right to adopt additional rules and regulations regarding hurricane shutters, including but not limited to, rules and regulations regarding design, color, location and use thereof. The installation, replacement and maintenance of such hurricane shutters in accordance with this paragraph shall not be deemed to be a material alteration of the Common Elements.

18. Clubhouse and Fitness Center Attire. No persons wearing bathing suits shall be allowed in the clubhouse, sales office or fitness center area. All persons must wear shirts and shoes in the sales office and clubhouse and proper exercise attire in the fitness center area. No wet persons shall be allowed in the clubhouse area except restrooms. No pets shall be allowed in the Clubhouse, Fitness Center or Sales Offices.
19. Noise.
 - (a) No Unit Owner shall make disturbing noises in the Building or allow sounds to emanate from his Unit, or permit his family, servants, employees, agents, visitors or licensees to do so. In particular, no Unit Owner shall play (or permit to be played in his Unit or on the Common Elements appurtenant to it) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. All other unnecessary noises such as the playing of pianos and other musical instruments, and slamming doors between the hours of 10:30 p.m. and 8:00 a.m. should be avoided.
 - (b) No radio or television installation or other electric equipment shall be permitted in any Unit if it interferes with the television or radio reception of another Unit.
 - (c) Carpentry, carpet-laying, picture-hanging, or any trade (or do-it-yourself work) involving hammer work, etc., must be done between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday and Saturday between 10:00 a.m. and 5:00 p.m. ONLY. No such work shall be done on Sundays.

20. Nuisance. A Unit Owner shall not permit anything to be done or kept in his Unit which will increase the insurance rates on his Unit, the Common Elements, or any portion of the Condominium or obstruct or interfere with the rights of other Unit Owners or the Association. A Unit Owner shall not commit or permit any nuisance, immoral or illegal act in his Unit or the Common Elements.
21. Obstructions. The entranceways, sidewalks, parking spots and similar portions of the Common Elements must be kept open and shall not be obstructed, littered, defaced or misused in any manner and shall be used only for ingress and egress to and from the Condominium Property. No carts, bicycles, carriages, chairs, tables or other objects shall be stored in these areas.
22. Odors. No noxious or unusual odors shall be generated in such quantities that they permeate to other Units and become annoyances or become obnoxious to another Unit Owner. Normal cooking odors, normally and reasonably generated, shall not be deemed violations of this regulation.
23. Pets. Pets, birds and fish shall neither be kept nor maintained in or about the Condominium Property except in accordance with the provisions of the Declaration and the following:

(a) Each Unit Owner (regardless of the number of Owners), may maintain two (2) domestic dogs, or two (2) domestic cats as household pets in a Unit, but in any event no more than a total of two (2) animals per unit provided said pets are not kept, bred, or maintained for any commercial purpose and does not become a nuisance or annoyance to neighbors. Notwithstanding the foregoing, no Unit Owner may keep in or on the Condominium Property any dangerous breed dogs, including but not limited to pit-bulls, rottweilers, chows *etc.* Unit Owners must pick up all solid wastes of their pets and dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit. Pets may not be kept in the Common Element or in a Limited Common Element, nor be kept in the lobby, or other public areas of the Condominium. No pets shall be allowed at any time in any lakes, parks, pool or pool areas unless designated by the Association. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Without limiting the generality of Section 18 hereof, violation of the provisions of this Subsection shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require, through order of the Board, any pet to be permanently removed from the Condominium Property.

(b) No dog or cat shall be permitted outside of its Owner's Unit unless attended by an adult and on a leash not more than six (6) feet long. Failure to comply with this rule may result in a fine of \$50.00 per violation.

(c) No domestic bird of a variety which will omit sounds that can be heard in contiguous units may be kept by a Unit Owner in a Unit.

(d) A Unit Owner may permit their lessee to keep an approved pet. The lessee will be bound by these rules and Unit Owner held responsible for compliance.

(e) Unit Owners must immediately collect and clean-up any feces from pets upon the Condominium Property. Failure to comply with this rule may result in a fine of \$50.00 per violation.

(f) Violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as may be provided in these applicable rules and regulations or the Declaration) and/or to require any pet to be permanently removed from the Condominium Property.

(g) The Unit Owner shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal in the Condominium. If a dog or any other animal becomes a nuisance and/or is obnoxious to other Unit Owners by barking or otherwise, the Unit Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Unit Owner, upon written notice by the Association, will be required to remove the animal.

(h) Pets shall not be permitted to become nuisances to Unit Owners or occupants of Units and are subject to removal from the Condominium at the discretion of the Board of Directors after a hearing conducted in the same manner as hearings for fines.

24. Plumbing. All plumbing and plumbing fixtures shall not be used for any purposes other than those for which they are constructed. No sweepings, rubbish, rags or other foreign substances shall be thrown into them. The cost of any damage resulting from misuse shall be borne by the Unit Owner causing the damage. Cooking grease and oils may not be disposed of in the sink drain, garbage disposal or commode, separate container must be used for disposal of such materials.
25. Responsibility for Deliveries. Unit Owners shall be liable for all damages to the building caused by receiving deliveries, or moving or removing furniture or other articles to or from the building. The Association shall have the right to charge any Unit Owner, prior to any interior construction to a Unit, or any delivery or removal of furnishings or bulk trash to or from that Owner's Unit, a refundable deposit, in the amount to be determined by the Board in its sole and absolute discretion, which deposit shall be held, and which may be used, by the Association for any damage caused to the Common Elements of the Condominium or for payment or reimbursement of any bulk trash hauling or other associated expense. The Association shall refund the deposit within ten (10) days after the completion of construction of the interior of the Unit or after delivery or removal of any furnishings and/or bulk trash.
26. Roof. Unit Owners, their families, guests and are not permitted on the roof for any purpose.
27. Rules and Regulations Enforcement. These Rules and Regulations will be enforced as follows:
- (a) Violations should be reported to the manager of the Association, in writing, and not to the Board of Directors or to officers of the Association.
 - (b) Violations will be called to the attention of the violating Unit Owner by the manager. The manager will also notify the appropriate committee of the Board of Directors.
 - (c) Disagreements concerning violations will be presented to, and be judged by, the Board of Directors, which will take appropriate action.
 - (d) Unit Owners are responsible for compliance by their family members, guests, invitees, employees and lessees with these rules and regulations.
28. Signs. With the exception of signs used or approved by the Developer, no signs, advertisements, notices or lettering may be exhibited, displayed, inscribed, painted or affixed in, or on upon any part of the Common Elements or Common Areas, or any part of a Unit, to the property or right of way to the property, so as to be visible outside the Unit or the property, "For Sale" and "For Lease" signs are specifically prohibited.

29. Solicitation. There shall be no solicitation by any person anywhere in the building for any cause, charity, or any purpose whatever, unless specifically authorized by the Board of Directors.
30. Storage. Each Unit Owner's personal property must be stored within the Unit.
31. Telephones. All residents must maintain either telephone service at all times in their Unit or maintain cellular phone service and shall advise the Association and manager of their telephone number or cellular phone number.
32. Trash. All trash, garbage and refuse from the Units shall be deposited with care in garbage dumpsters intended for that purpose. Such Unit's trash hauling fee shall be used by the Association to defer any and all costs, which may be incurred or associated with such construction or remodeling. Garbage and other refuse shall be placed in sealed garbage bags and placed by hand, in designated trash dumpsters. No garbage, garbage containers or garbage boy may be kept outside of the Unit either on porches, patios or other limited common element areas. Garbage containers designated by the Association shall be permitted.
33. Use and Occupancy. All Units shall be used for residential purposes. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons for each bedroom contained in a Unit including convertible portions of any Units. The term "temporary occupancy" as used herein shall mean occupancy of the Unit not to exceed thirty (30) consecutive days.

Without limiting the generality of this paragraph, the provisions of this paragraph shall not be applicable to Units owned or used by the Developer for model apartments, sales offices, management services or otherwise.

Under no circumstances may more than one (1) family reside in a Unit at one time. "Families" or words of similar import used herein shall mean either a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or a group of not more than four (4) persons not so related.

34. Window and Door Coverings.
- (a) Curtains, drapes and other window or door coverings (including their linings) which face on exterior windows or glass doors of Units shall be white or off-white in color unless otherwise specifically approved by the Board of Directors.
 - (b) No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit except a substance previously approved by the Board of Directors for energy conservation purposes. No windows may be tinted.
 - (c) Blinds must be 2" slat white horizontal, patios blinds are to be verticals or 2" slat blinds, and no bedsheets or blankets or similar items may be placed or displayed in Windows.
35. Wires etc. No wiring may be installed or placed on the exterior of any Unit and no roof may be penetrated for any purpose. The exterior of a Unit may not be penetrated for any purpose.
36. Weight Limitations. No Unit Owner shall cause to be placed any weight on any portion of his Unit which shall interfere with the structural integrity of the building.
37. Parking and Vehicle Restrictions.

- (a) Improper or non-conforming vehicles may be towed by the Association at the Unit Owner's expense and liability, subject to applicable provisions of law.
- (b) Delivery or repair vehicles must park in visitor or guest spaces only and may not remain longer than 2 hours, unless parked in the main Common Parking Area.
- (c) No Owner or guest may park in a parking space that has been assigned to another Unit Owner.
- (d) The Association may grant special permission for parking in non-assigned parking spaces.
- (e) Motorcycles must provide reinforcement materials under the kickstand to avoid making holes in the pavement.
- (f) No loud or modified muffler vehicles shall be allowed.
- (g) Bicycles, mopeds, mopeds, tricycles, scooters (motorized or not) shall not be parked in front or sides of buildings or on the front porch, but may be stored in the patio, except for motorized vehicles used by handicap persons.
- (h) No vehicle washing, repair or maintenance shall be allowed except that car-washing will be allowed in specific areas.
- (i) No vehicle shall be parked on any lawn or grassed area, sidewalks, curbs, landscaped area, traffic lanes, any area not striped and marked for parking, dumpster pads, or in any manner that will obstruct traffic.
- (j) No parking space or driveway may be blocked. This rule shall apply even if other space or driveway is assigned to the Unit Owner who is blocking the space.
- (k) Any vehicle with lettering or graphics will be considered as commercial vehicle and prohibited from parking.
- (l) Parking in handicapped spaces will be allowed only by permit.
- (m) No vehicle shall be allowed to drip oil or other hydro-carbons onto the driveways or parking areas.
- (n) No skateboards, motorized vehicles or bicycles shall be allowed on any walking path or sidewalk.
- (o) Developer and Declarant's management shall be exempt from these rules during construction and maintenance.

38. Miscellaneous.

- (a) No garage sales or yard sales shall be allowed.
- (b) Hose bibb keys will be available to Unit Owners and tenants upon request only and must be returned on the same day.
- (c) Bulk disposal items (furniture, appliances etc.) must be stored in areas designated by the Association until picked up. The costs of bulk pickup will be reimbursed by Unit Owner or tenants to the Association.
- (d) Any Unit Owner who is renting the Unit, shall provide in the Unit lease that lessee is bound by all Rules and Regulations contained herein.
- (e) Any Unit Owner who is renting shall provide in the lease that Lessee must carry general liability insurance coverage in excess of \$100,000.00, and also carry contents coverage (renters insurance) and provide proof of such insurance to the Unit Owner and the Association.

39. Resale or Re-Leasing Units.

- (a) No signage for sale by owner or a realtor will be permitted in or on a Unit, nor on Limited Common Elements or Common Areas, nor in the right-of-way adjacent to the Condominium Property or Common Areas.
- (b) Owner may register the Unit for sale or lease with the Association which will maintain a list of all Units for sale or lease within the Condominium and the name of a contact person.

- (c) No access to the Condominium Property will be given to potential buyers or tenants unless Owner, lessors and agents for same have made separate arrangements with the Association for access.
- (d) Potential buyers or tenants must be escorted personally by the Owner, Lessor or their agents when showing the Unit or Common Areas.

40. Association Approval of Lease and Tenants.

- (a) The Association must approve all applications and leases.
- (b) For all leases, the Owner of the Unit to be leased must provide an application form, approved by the Association, with an agreement from the potential tenant granting permission of the Association to check the potential tenant's criminal record. The potential tenant shall also provide to the Association a non-refundable application review fee of \$50.00.
- (c) The Association shall have seven (7) business days to run a criminal records check and issue approval of the lessee. The Association shall comply with all applicable Fair Housing laws and doctrines and approval of any lessee shall not be unreasonably withheld.
- (d) A Unit Owner shall be prohibited from leasing his unit for more than three (3) separate terms within a one (1) year period with a minimum term of thirty (30) days.

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09/27/05



EXHIBIT "E"

ARTICLES OF INCORPORATION



State of Florida



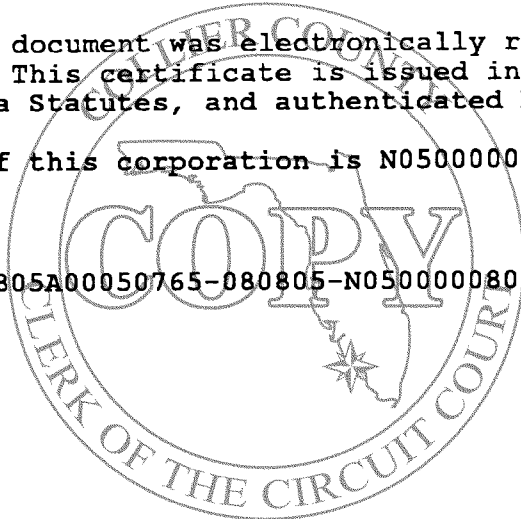
Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of POSITANO PLACE AT NAPLES IV CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on August 5, 2005, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H05000187601. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below

The document number of this corporation is N05000008025.

Authentication Code: 805A00050765-080805-N05000008025-1/1



Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Eighth day of August, 2005



Glenda E. Hood
Glenda E. Hood
Secretary of State

OR: 4014 PG: 0647

Exhibit "E"ARTICLES OF INCORPORATIONFORPOSITANO PLACE AT NAPLES IV CONDOMINIUM ASSOCIATION, INC.

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

ARTICLE 1NAME AND ADDRESS

The name of the corporation shall be Positano Place at Naples IV Condominium Association, Inc. The principal address of the corporation shall be 1515 South Federal Highway, Suite 102, Boca Raton, Florida 33432. 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 2PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located or to be located in Collier County, Florida, and known as Lauderdale One, a Condominium.

ARTICLE 3DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of the Condominium to be recorded in the Public Records of Collier County, Florida, unless herein provided to the contrary, or unless the context otherwise requires. In construing these Articles, the use of any gender shall include every other gender.

ARTICLE 4POWERS

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

- (a) To make and collect Assessments and other charges against members as Unit Owners, 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.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.
 - (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and Unit Owners.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners.
 - (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
 - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Condominium Property, subject, however, to the limitation regarding assessing Units owned by the Developer for fees and expenses relating in any way to claims or potential claims against the Developer as set forth in the Declaration and/or By-Laws.
 - (h) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which 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 such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
 - (i) The power to acquire title to property upon the vote of 66 2/3% of all the voting interests of the Units (for the purchase of Units at a foreclosure sale no Unit Owner approval is required); to make and collect Assessments and other charges against Unit Owners and to otherwise hold, regulate, administer, convey, lease, maintain, repair, replace and mortgage the Association Property, including the right to grant, modify or move easements which are part of or cross the Common Elements or Association Property.
 - (j) To employ personnel to perform the services required for the proper operation, maintenance, conservation, and use of the Condominium.
- 4.3 Condominium Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 4.4 Distribution of Income; Dissolution. The Association shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another

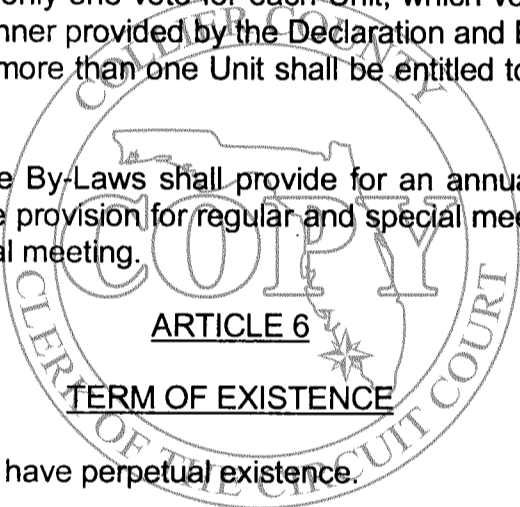
not for profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Statute.

- 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, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 5

MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns. New members shall deliver a true copy of the recorded deed or other instrument of acquisition of title to the Association.
- 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 only one vote for each Unit, which vote 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 one 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

INCORPORATOR

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

<u>NAME</u>	<u>ADDRESS</u>
Robert S. Forman	2101 W. Commercial Blvd., Suite 2800 Fort Lauderdale, Florida 33309

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 and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

	<u>Name</u>	<u>Address</u>
<u>President:</u>	Joe Papasso	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309
<u>Vice-President:</u>	Harold Tomlinson	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309
<u>Secretary-Treasurer:</u>	Alex Muxo	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309

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, and which shall always be an odd number. During Developer control, Directors need not be Unit Owners; provided, however, upon turnover, each Director, other than any Developer appointed or elected Director, shall be a Unit Owner.

- 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 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 and 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 taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Joe Papasso	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309
Harold Tomlinson	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309
Alex Muxo	2101 West Commercial Blvd., Ste. 4100 Fort Lauderdale, Florida 33309

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, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he acted with fraudulent or criminal intent and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the proposed indemnitee acted fraudulently, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

- 10.2 Expenses. A director, officer, employee or agent of the Association shall be indemnified and promptly defended in any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith in defense of any claim referred to in Section 10.1 herein. Assessments may be made by the Association to cover any expenses or other amounts to be paid by the Association in common with the indemnification provided herein.
- 10.3 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding through all available appeals.
- 10.4 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.
- In no event shall any party entitled to indemnity herein be deemed to have acted fraudulently with respect to the Association if the indemnified party acted (i) based upon advice of legal counsel or other professional advisor or (ii) in a manner consistent with reasonable business judgement.
- 10.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.
- 10.6 Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 10 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

ARTICLE 11BY-LAWS

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

ARTICLE 12AMENDMENTS

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

- 12.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 12.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 12.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer, or an affiliate, successor or assign of the Developer, unless the Developer shall join in the execution of the amendment. No amendment to this paragraph 12.3 shall be effective.
- 12.4 Developer Amendments. To the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declaration, including, the Articles of the Declaration allowing certain amendments to be effected by the Developer alone.
- 12.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Collier County, Florida.

ARTICLE 13

INITIAL REGISTERED OFFICE,
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this Corporation shall be at 2101 West Commercial Blvd., Suite 2800, Fort Lauderdale, Florida 33309, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent of the Corporation shall be Robert S. Forman who shall also be a resident agent, whose address is 2101 W. Commercial Blvd., Suite 2800, Fort Lauderdale, Florida 33309.

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

[Signature]
Incorporator

STATE OF FLORIDA)
) SS.
COUNTY OF Broward)

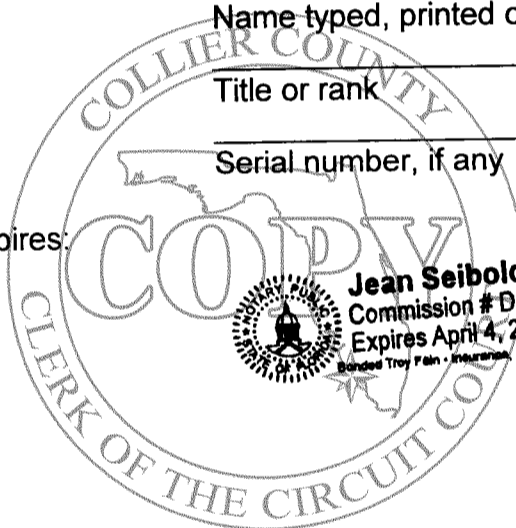
The foregoing instrument was acknowledged before me this 22 day of July, 2005, by Robert S. Tolman, who is personally known to me or who has produced _____ (type of identification) as identification and who did not take an oath.

Jean Seibold
Signature of person taking acknowledgment
Jean Seibold
Name typed, printed or stamped

Title or rank

Serial number, if any

My commission expires:



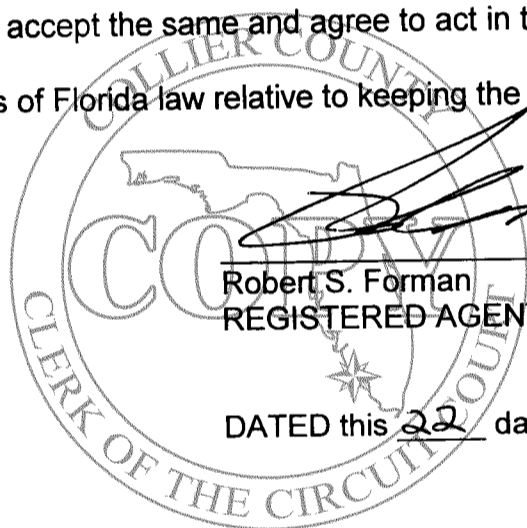
Jean Seibold
Commission # DD306503
Expires April 4, 2008
Bonded Troy Fahn - Insurance, Inc. 800-365-7019

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

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in Broward County, Florida the corporation named in the said Articles has named c/o Robert S. Forman, whose address 2101 W. Commercial Blvd., Suite 2800, Fort Lauderdale, Florida 33309, as its statutory registered agent.

Having been named the statutory agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.




Robert S. Forman
REGISTERED AGENT

DATED this 22 day of July, 2005.

Positano Place IV - Articles of Incorporation.DOC
07/22/05