

DECLARATION OF CONDOMINIUM

FOR

MALACHITE AT SAPPHIRE LAKES, A CONDOMINIUM

If this condominium is located in a master association or other common property ownership community, the governing documents for the master or other common property ownership community are not included.

The attached documents cover only the specific condominium in which your unit is located and do not include any master or other common property ownership community's governing documents.

ORIGINAL

Retn:
JANE TRACER CHEFFY
2375 TANTANI TR N #310
NAPLES FL 34103

2667330 OR: 2702 PG: 1901
RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL
07/25/2000 at 02:29PM DWIGHT H. BROCK, CLERK

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**DECLARATION
OF CONDOMINIUM**

FOR

MALACHITE AT SAPPHIRE LAKES, A CONDOMINIUM

REUVEN HAIM BUILDERS, INC., a Florida corporation, (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 "1" annexed hereto (the "Land"). Developer acquired title to the land by Warranty Deed dated March 23, 1995, recorded at O.R. Book 2074, Page 0012, Public Records of Collier County, Florida.
 - 1.2 **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected thereon, including water and sewer utility facilities, all rights and appurtenants 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 (e.g., cable television) utility installations therein or thereon owned by the utility or entity furnishing services to the condominium - 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, except as described herein.
 - 1.3 **Name.** The name by which this condominium is to be identified is MALACHITE AT SAPPHIRE LAKES, A CONDOMINIUM (hereinafter called the "Condominium"), with an address of 8001 Radio Road, Naples, Florida 34104.
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 attached hereto as Exhibit "3", and 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 "Association" or "Condominium Association" means Malachite at Sapphire Lakes Condominium Association, Inc., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the representative body which is responsible for administration of the Association.
- 2.7 "Building" means the structure situated on the Condominium Property in which the Units are located, regardless of the number thereof.
- 2.8 "By-Laws" mean the By-Laws of the Association attached hereto as Exhibit "4" and as amended from time to time.
- 2.9 "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 (1) Unit or to the Common Elements.
 - (d) Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.
- 2.10 "Common Expenses" mean all expenses incurred by the Association for the Condominium and charges assessed or imposed against Units in the Condominium by the Association as set forth in this Declaration and the Act.

OR: 2702 PG: 1902

- 2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12 "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.
- 2.13 "Condominium Property" means the land, improvements and other personal property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.14 "County" means the County of Collier, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.16 "Developer" means REUVEN HAIM BUILDERS, INC., a Florida corporation, 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.
- 2.17 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building(s).
- 2.18 "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") any other lender generally recognized as an institutional lender, or the Developer, any of which hold a first mortgage on a Unit or Units and any and all investors, or the successors and assigns of such investors which have loaned money to Developer to acquire, or construct improvements upon the Property and who have a mortgage lien on the Property securing such a loan. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of units by which greater than one-half ($\frac{1}{2}$) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are encumbered.

OR: 2702 PG: 1903

- 2.19 "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.
- 2.20 "Master Association" means Sapphire Lakes Master Association, Inc., a Florida not-for-profit corporation, the entity responsible for the operation of the common areas of the Sapphire Lakes Community.
- 2.21 "Master Covenants" means the Declaration of Covenants, Restrictions and Easements for the Sapphire Lakes Community recorded at O.R. Book 1625, Pages 1952 et.seq. in the Public Records of Collier County, Florida, and when the context permits, shall also mean the Articles of Incorporation and By-Laws of Sapphire Lakes Master Association, Inc., (the "Master Association") all as now or hereafter amended, modified or supplemented.
- 2.22 "Master Developer" means GMA DEVELOPERS, INC., a Florida corporation, the Developer and their successors and assigns. Master Developer may assign all or a portion of its rights or obligations set forth under the Master Covenants by a written instrument setting forth the rights or obligations so assigned to other parties or entities and, to the extent of such rights or obligations specifically so conveyed or assigned, such party or entity shall also be a Master Developer thereunder if so stated in said written instrument.
- 2.23 "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.
- 2.24 "Residential Unit" means a Unit intended for residential uses.
- 2.25 "Residential Unit Owner" or "Owner of a Residential Unit" means the owner of a Condominium Parcel intended for residential uses.
- 2.26 "Sapphire Lakes Community" or "Sapphire Lakes" means the multi-phase residential development proposed to be constructed by Developer and Master Developer in Collier County, Florida, as more fully described in the Master Covenants.
- 2.27 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.28 "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel intended for residential uses.

OR: 2702 PG: 1904

- 2.29 "Utility Service" means and is intended to include, but not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal.
- 2.30 "Contributing Unit" means any Residential Unit against which an assessment is made in accordance with the Sapphire Lakes Master Covenants.
- 2.31 "Contributing Unit Owner" means the Owner of a Contributing Unit.
- 2.32 "Association Member" means the Association which shall be a member of the Master Association. No owner of any property or Residential Unit which is subject to the jurisdiction of an Association shall be deemed a member of the Master Association, except for the Developer or Master Developer.
- 2.33 "Owner Member" means the Owner of any Committed Properties which is not subject to the jurisdiction of an Association, but such owner shall be a member of the Master Association. Notwithstanding the foregoing, no governmental authority or utility company shall be deemed an Owner Member unless one or more Residential Units actually exist upon the property owned by such governmental authority or utility company, in which event the governmental authority or utility company will be an Owner Member only with respect to the property.

3. Sapphire Lakes Land Plan.

- 3.1 Role of the Malachite at Sapphire Lakes Condominium Association. Malachite at Sapphire Lakes, a Condominium, constitutes a portion of a proposed multi-phase residential community to be known as the Sapphire Lakes Community which is being developed under the plan for development established and set forth in the Master Covenants. Certain areas will be set aside in reserve for the use of all owners and residents in the Sapphire Lakes Community. Owners of Residential Units located within the Sapphire Lakes Community shall be responsible for the expenses of the management, operation and maintenance of the Master Association, all common areas of Sapphire Lakes and areas which are intended for the use and enjoyment of the public, thus, Unit Owners are expressly obligated to pay a pro rata share in accordance with the budget to be prepared by and assessments to be made by the Master Association. The Unit Owners hereby recognize that all of the covenants set forth in the Sapphire Lakes Master Covenants, including, but not limited to, the affirmative covenants and obligations to pay Operating Expenses as therein set forth shall run with the land within the Condominium Property and any assessments made pursuant to the Sapphire Lakes Master Covenants and assessed against any Contributing Unit shall be collected in the same manner and to the same extent and by the same procedure as the Common Expenses are collected by such Association. The Association shall

OR: 2702 PG: 1905

collect the assessments for the Contributing Units it operates and pay same to the Master Association when such assessment is due in accordance with the terms of the Sapphire Lakes Master Covenants. Each Unit Owner, by acceptance of a deed or other instrument of conveyance conveying a Residential Unit, whether or not it shall be so expressed in such deed or instrument, acknowledges that it shall be a "Contributing Unit Owner" (meaning the owner of a Contributing Unit) and that it shall be obligated and agrees to pay all assessments for Operating Expenses in accordance with the provisions of the Sapphire Lakes Master Covenants and consents and agrees to the lien rights thereunder against its Residential Unit.

4. Role of Association and Master Association. The Developer has formed the Association to operate the Condominium and each Unit Owner shall be a member of the Association. The Master Developer has also formed the Master Association to operate the common areas of Sapphire Lakes as provided for in the Master Covenants. The Association shall be the member of the Master Association. No owner of any property or Residential Unit which is subject to the jurisdiction of an Association shall be deemed a member of the Master Association except for Master Developer. Each Residential Unit Owner, as a member of an Association, shall be entitled to the benefit of and be subject to the provisions of the Sapphire Lakes Master Covenants as they may be amended from time to time. The Board of Directors of the Association shall designate a person (the "Representative") to act on behalf of the Association at all Members' meetings of the Master Association. The Representative shall be designated by a certificate signed by the President or Vice-President of the Association and filed with the Secretary of the Master Association. The person designated by such certificate shall conclusively be deemed the person entitled to cast the votes for the Association Member at any Master Association meeting. Each Association Member shall be a member of the Master Association, acting through its Representative as described in the Articles of Incorporation and By-Laws for the Master Association. On or before the date each assessment for Common Expenses for the Master Association is due, the Association shall be required to and shall pay to the Master Association an amount equal to the assessment for Common Expenses per Residential Unit, multiplied by the number of Units within the Condominium Property. The Association and Master Association shall act in accordance with the overall plan for the development of the Sapphire Lakes Community.

5. Description of Condominium.

5.1 Identification of Units. The Land has constructed thereon nineteen (19), one-story buildings containing two (2) units each for a total of thirty-eight (38) Residential Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "2" attached hereto, which Exhibit consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located, a plot plan thereof, and a Certificate of Surveyor indicating substantial completion as to the first three

OR: 2702 PG: 1906

buildings. Additional Certificates of Surveyor will be recorded as each additional building in Malachite is substantially completed. Said Exhibit "2", 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 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.

5.2 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. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
 - (i) The horizontal plane of the undecorated finished ceiling. In a Unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the Unit, the ceiling shall include the vertical or diagonal surface connecting the raised ceiling with the ceiling of the remaining portion of the Unit, and the upper boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the ceiling.
 - (ii) Lower Boundary: The horizontal plane of the undecorated finished floor. In a Unit containing a room in which the floor is raised above the level of the floor in the rest of the Unit, the floor shall include the vertical or diagonal surface connecting the raised floor with the floor of the remaining portion of the Unit, and the lower boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the floor.
 - (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the middle or upper floor(s), ceiling of the middle or lower floor(s), stairwell adjoining floors or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding

OR: 2702 PG: 1907

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, 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 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.
- (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 "2", 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 "2" attached hereto, and in the event it shall appear that any dimension shown on Exhibit "2" attached hereto is erroneous the Developer or the President of the Association shall have the right to unilaterally amend the Declaration to correct such survey, and any such amendment shall not require the joinder of any Unit Owner or 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 "2" 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 "2" describing the boundaries of a Unit, the language of this Declaration shall control.

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

- (a) Patios, Balconies and Terraces. Any patio, balcony or terrace (and all improvements thereto and walls facing same) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). Window boxes affixed to Units or their Limited Common Elements shall also be Limited Common Elements thereof.
- (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) Restrictions on Parking Spaces. The two (2) "villa" units within the one-story building contain a garage within the unit boundary and shall not be assigned as additional parking garage.
- (d) Mortgage Provision. Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages his Unit, together with his Limited Common Elements (whether or not ordinarily fully assignable apart from the Unit), such Limited Common Elements shall not be assignable apart from the Units unless they are released from the lien of such mortgage.

5.4 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.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, other services and drainage and water management in order to serve the Condominium. 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 and security systems, other service, or water management facilities or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit during reasonable hours to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and security systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any

OR: 2702 PG: 1909

Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except as necessary to prevent damage to the Common Elements or to another Unit or Units, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit.

- (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 Improvement (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this 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 thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so or where the Developer, in its sole discretion, determines that it is required to do so. Notwithstanding the foregoing, this right shall at all times be subject to the provisions of Section 718.111(5) Florida Statutes.
- (f) Sales Activity. For as long as there are any unsold Units or Units leased to

OR: 2702 PG: 1910

the Developer or the Master Developer, the Developer, its designees, nominees, successors and assigns, and the Master Developer, its designees, nominees, 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 and to show and use 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.

- (g) Cable TV. 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) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the CATV System or any part thereof, (iii) the right to connect the CATV System to whatever receiving source the owner of the CATV System deems appropriate, and (iv) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the CATV 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) Special Telephone Services. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any telephone system (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.

- (i) **Additional Easements.** The Developer (as long as it owns any Units) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, 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 or water management facilities*, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, 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.

6. **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 lie, except as provided herein with respect to termination of the Condominium.

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

- 7.1 **Fractional Ownership and Shares.** The ownership of each Unit shall include an undivided fractional interest in the Land and other Common Elements as defined in §718.108 of the Florida Statutes and an undivided fractional interest in the Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, which, for each unit shall be 1/38th.
- 7.2 **Voting.** Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the respective By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

8. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

8.1 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 Units in the Condominium. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by affirmative vote of:

(a) Unit Owners in excess of 50% of the Units in the Condominium and by not less than 66 2/3% of the Board of Directors of the Association; or

(b) Unit Owners in excess of 66 2/3% of the Units in the Condominium.

8.2 By the Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or affect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owner's consent in writing.

8.3 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 the County.

8.4 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 Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, and all record owners of liens on the Unit join

OR: 2702 PG: 1913

in the execution of the amendment and unless all the record owners of all other Units approve the 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 or mortgagees of units or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association without the consent of said Developer and mortgagees in each instance; any mortgagee consent shall not be unreasonably withheld. No amendment shall make any change in the sections hereof entitled "Reconstruction or Repair after Casualty", or "Condemnation", which amendment materially affects the rights or interests of the primary Institutional First Mortgagee, unless the Primary Institutional First Mortgagee shall join in the amendment. Such joinder shall not be unreasonably withheld. The provisions of this Section 8.4 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 word shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation 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.

9. Units and Limited Common Elements. 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 interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or 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.

9.1 Common Elements. Except to the extent (i) expressly provided to the contrary herein, (i.e., as to Limited Common Elements) or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising

from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owner(s).

- 9.2 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 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, are Limited Common Elements or are Common Elements other than Limited Common Elements. Where a Limited Common Element consists of a terrace (more particularly without limitation, balcony, court or patio) the Unit Owner who has the right to the exclusive use of said terrace, balcony, court or patio shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling within said area, if any, and the fixed and/or sliding glass door(s) in or other portions of the entrance way(s) of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any. Notwithstanding the foregoing, the Association may provide maintenance for the Limited Common Elements and shall charge and collect such costs and charges incurred for said maintenance to the specific Unit entitled to use the Limited Common Elements for which the maintenance and repairs were performed.

10. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$10,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$10,000 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.

11. Additions, Alterations or Improvements by Unit Owner.

- 11.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Unit or any Limited Common Element, including, but not limited to, the installation of awnings, hurricane shutters, hot tubs or trellises in balconies, terraces and patio areas.

without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. Notwithstanding the foregoing, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to specifications as to color, style and other factors deemed relevant by the Board. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, and all other Unit Owners harmless from and to indemnify them for any expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation of construction thereof as may be required by the Association.

The Board may appoint an Architectural Control Committee to assume the foregoing functions on behalf of the Board.

11.2 Additions, Alterations or Improvements by Developer. The foregoing restrictions of this Section 11 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon 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 (b) expand, alter, add to or eliminate all or any part of the recreational facilities.

12. Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 11.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; and (ii) change the layout or number of rooms in any Developer-owned Units. Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to such Units, incorporate

portions of the Common Elements, provided that such relocation and alteration does not materially adversely affect the market value (in the Developer's opinion) or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this paragraph 12 may be effective by the Developer alone. Without limiting the generality of Section 8.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

13. Operation of the Condominium by the Association: Powers and Duties.

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

- (a) The irrevocable right 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 therein, or of any portion of a unit maintained by the Association pursuant to this Declaration, or at any time as necessary, for making emergency repair therein to prevent damage to the Common Elements or a Unit or Units.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, lease, maintain, repair and replace the Common Elements.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at all reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (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.

- (e) 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.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (g) The power to charge a fee for the exclusive use of Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner being granted, by the Association, a right to such exclusive use.
- (h) 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 or the terms and provisions of this Declaration, 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.

- 13.2 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 11.1 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 such insurance is not required to be obtained or maintained by the Association when the Association is in compliance with Section 718.111(11) Florida Statutes. This Declaration and the Articles and By-Laws of the Association.

- 13.3 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.
- 13.4 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.
- 13.5 Acts of the Association. Unless the approval or action of Units 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.

14. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the Amount of the 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 and reserve for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, cost of providing a bulk rate cable television service, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association, incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve

accounts, or otherwise as the Board shall 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.

15. Collection of Assessments.

- 15.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while that person is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for the share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 15.2 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. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. 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. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days prior written notice to the applicable Unit Owner, the Association may declare the next twelve (12) months of Assessment installments to be accelerated (or if acceleration to such extent is prohibited by the

OR: 2702 PG: 1920

Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such shall thereupon be immediately due and payable. In the event that the amount of such installments changes during the period of 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.

- 15.3 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.
- 15.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 15.5 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to the Unit as a result of foreclosure of its mortgage pursuant to proceedings in which the Association has been properly named as a junior lienholder, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such Institutional First Mortgagee, its successors and assigns, shall be liable only for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due subsequent to that period of time commencing six (6) months preceding acquisition of title as a result of the foreclosure (provided the Association has been properly named as a defendant junior lienholder) or the acceptance of such deed.

In no event shall such institutional first mortgage be liable for more than one (1) percent of the original mortgage debt. Such unpaid share of Common Expenses or Assessments or other charges shall be deemed to be Common Expenses

collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

- 15.6 Developer's Liability for Assessments. During the period from the date of recording of this Declaration until the later of the date six (6) months after the first closing of the sale of a Unit, which period may be extended by the Developer an additional six(6) months without the consent or approval of the Board of Directors or of the Unit Owners, or (ii) the date on which control of the Association is transferred to Unit Owners other than the Developer (the "Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments attributable to Units it is offering for sale, provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over \$185.09 per month which is the amount set forth in the Estimated Operating budget contained in the applicable Prospectus delivered to such Unit Owner when such Owner contracted to purchase the Unit, if applicable, and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level. For purposes of this Section, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee by written agreement with a majority of non-Developer Unit Owners on the same terms or paying the share of Common Expenses and Assessments attributable to Units it is then offering for sale. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing. Notwithstanding anything to the contrary contained herein, capital contributions or start-up funds collected from Unit purchasers at closing may be used to reimburse Developer for start-up expenses of the Association, or otherwise as the Association shall determine from time to time and need not be restricted or accumulated.
- 15.7 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 all assessments and other moneys owed to the Association by the Unit Owner with respect to their Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 15.8 Installments. Regular Assessments may be collected monthly or quarterly, in

OR: 2702 PG: 1922

advance, at the option of the Association from time to time.

15.9 Use of Common Elements. The Association shall not charge any fee against a Unit Owner for the use of the Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner.

16. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

16.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance.
- (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 (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.

OR: 2702 PG: 1923

16.2 Coverage. The Association shall use its best efforts to maintain insurance covering the following:

- (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, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners) 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 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. 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) 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, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$300,000 per person and \$100,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Insurance or Fidelity Bonding in adequate amounts covering all directors, officers, employees, management agents, and other persons who control or

OR: 2702 PG: 1924

disburse Association funds (as defined in Section 718.111 (11) (d), Florida Statutes). The insurance policy or fidelity bond must cover the maximum funds that will be in custody of the Association or its management agent at any one time. The Association shall bear the cost of bonding.

- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of 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.

- 16.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least forty-five (45) 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.
- 16.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums financed in such manner as the Board of Directors deems appropriate.
- 16.5 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

OR: 2702 PG: 1925

their own Unit and other areas of the Common Elements for which they have exclusive use, or for which they have an obligation to repair or replace.

16.6 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. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to Section 16.11 hereof. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit.
- (b) 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.

16.7 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 shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 16.6 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.
- 16.8 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.
- 16.9 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.
- 16.10 Benefit of Mortgagees. Certain provisions in this Section 16 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 16.11 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails to or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 16.12 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.
17. Reconstruction or Repair After Fire or Other Casualty.

OR: 2702 PG: 1927

- 17.1 **Determination to Reconstruct or Repair.** In the event of damage to or destruction of the Insured Property as a result of fire or other casualty [unless 75% or more of the Insured Property is destroyed or substantially damaged and Unit Owners owning 80% or more of the applicable interests in the Common Elements elect not to proceed with repairs or restoration and a Majority of Institutional First Mortgagees approve such election], the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 75% or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be 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 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.

- 17.2 **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

OR: 2702 PG: 1928

and the applicable building and other code, and if the damaged property which is to be altered is the Building, 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 their respective mortgagees) the plans for which are to be altered.

17.3 Special Responsibility. If the damage is only to those parts of the 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 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 \$100,000, 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 funds, 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 \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

OR: 2702 PG: 1929

- (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 Property (if not insured or if under-insured), or may be distributed to Owners of 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 Property. All proceeds must be used to effect repairs to the Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the 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 resident 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.

OR: 2702 PG: 1930

- 17.4 Assessments. 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.
- 17.5 Benefit of Mortgagees. Certain provisions in this Section 17 are for the benefit of mortgagees of Units and may be enforced by any of them.
18. Condemnation.
- 18.1 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 the 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 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.
- 18.2 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.
- 18.3 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 18 specifically provided.
- 18.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the

OR: 2702 PG: 1931

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 to and payable by the Owner of the Unit.
- (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.

18.5 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 18.4(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 18.4(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 Division of Florida Land Sales, Condominium and Mobil Homes of the Department of Business Regulation and Florida Statute Section 718.1255. Except as set forth in Florida Statutes Section 718.1255(4)(c), (d) and (e), 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.

- 18.6 **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 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.
- 18.7 **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.
19. **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:
- 19.1 **Occupancy.** Each Unit shall be used as a single family residence only, except as otherwise herein expressly provided. A 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 fiduciary, 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.

OR: 2702 PG: 1934

and such persons' families who reside with them: (i) and 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 per bedroom and two (2) persons per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). 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 subdivision 19.1 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 and other persons permanently cohabiting the Unit as or together with the Owner or permitted occupant thereof. 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 one (1) month without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this 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 19 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

- 19.2 Children. Children shall be permitted to reside in Units, subject to the provisions of subdivision 19.1, above.
- 19.3 Pets. Except for fish, each Unit Owner (regardless of the number of, if any, Owners), may maintain two (2) household pets in a Residential Unit, to be limited to domestic dogs not to exceed thirty (30) pounds, or domestic cats, or caged birds, or one (1) fish tank not to exceed 55 gallons, provided they are not kept, bred, or maintained for any commercial purpose and do not become a nuisance or annoyance to neighbors. 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 Residential Unit. Pets may not be kept in a Limited Common Element. No pets shall be allowed on any elevators. No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Without limiting the generality of Section 21 hereof, 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 provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

- 19.4 **Alterations.** Without limiting the generality of Section 11.2 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, machinery, pools, whirlpools or saunas or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 11.1 hereof).
- 19.5 **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.
- 19.6 **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.
- 19.7 **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 there over shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction there over, 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 Section 19.7.
- 19.8 **Leases.** No portion of a Unit (other than an entire Unit) may be rented. All leases shall be in writing, be approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may deny permission to lease any Unit on any reasonable grounds the Association may find. No lease shall be

OR: 2702 PG: 1936

approved for a term of less than thirty (30) days or one (1) calendar month, whichever is less and no single Unit may be leased more than three (3) times in any one calendar year. The Association shall have the right to require of all tenants that they deposit in escrow with the Association a sum not in excess of one (1) month's rent which may be used by the Association to repair any damage to the Common Elements or other property owned by the Association resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Regardless of whether or not expressed in the applicable lease, all Unit Owners shall be jointly and severally liable with their 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 his tenant(s) 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 also comply with and be subject to the provisions of Section 20 hereof. This Section shall also apply to subleases and assignments and renewals of leases. No lease approved by the Association shall be amended or modified without the Association's approval.

The Association may charge a lease approval fee not in excess of any amount provided for in the Act (as it may be amended from time to time) as a maximum amount for such fees, but no fee shall be charged in connection with the approval of an amendment, modification or extension of a previously approved lease.

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

- 19.9 Exterior Improvements: Landscaping. Without limiting the generality of Sections 11.1 and 19.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters (except hurricane shutters), screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association and the Architectural Review Committee.

None of the balconies that are contiguous to Residential Units and designated as Limited Common Elements under the Declaration may be enclosed, glassed in or screened in, nor may any Residential Unit Owner alter the configurations of such balconies, or hang plants, draperies, screens or other items therefrom.

- 19.10 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such

OR: 2702 PG: 1937

as tile, wood, etc., will be permitted throughout the Unit, provided, however, use of a hard and/or heavy surface floor covering in any location within the Unit must be submitted to and approved by the Board of Directors of the Association and also meet applicable structural requirements. Also, the installation of any Improvement or heavy object must be submitted to and approved by the Board of Directors of the Association, and be compatible with the structural design of the building and be adequately insulated from sound transmission. The Board of Directors of the Association may require the review of a structural engineer at Residential Unit Owner's expense. All other areas of the Unit which do not receive the approved hard and/or heavy surface floor coverings, are to receive sound absorbent, less dense floor coverings, such as carpet. Floor coverings on balconies shall be limited to a maximum composite thickness of ½" and a maximum composite weight of four pounds per square foot, including setting bed and/or adhesive materials, unless approved otherwise by the Board of Directors of the Association and compatible with the structural and architectural designs. The Board of Directors of the Association will have the right to specify the exact material used on balconies. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

- 19.11 Effect on Developer: Association. The restrictions and limitations set forth in this Section 19, except Sections 19.3 and 19.8, shall not apply to the Developer or Master Developer nor to Units owned by or leased to the Developer or Master 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 19 for good cause shown.

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

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

- 20.1 Right of First Refusal. Any Unit Owner who receives a bona fide offer to purchase his Unit (such offer to purchase a Unit, is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept shall give notice by certified and/or registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require. The giving of such notice to the Board of Directors shall constitute an

offer by such Unit Owner to sell his Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than thirty (30) days after receipt of such notice, together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said thirty (30) day period, by certified and/or registered mail, to purchase such Unit upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

In the event the Association shall timely elect to purchase such Unit or lease such Unit or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within forty five (45) days after the giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offer, the Outside Offerer was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title binder (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest if any and Common Expenses shall be apportioned between the Offeree Unit Owner and the Association, or its designee, as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board or to its designee a lease between the Offeree Unit Owner, as landlord, and the Association, or its designee, as tenant, covering such unit for the rental and term contained in such Outside Offer.

In the event the Association or its designee shall fail to accept such offer or, in the case of a lease, fail to reject the proposed lease as permitted by Section 19.8 hereof, within thirty (30) days after receipt of notice and all additional information requested, as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer within thirty (30) days after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such thirty (30) day period, accept, in writing, the Outside Offer

or if the Offeree Unit Owner shall accept the Outside Offer within such thirty (30) day period, but such sale shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this Section.

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

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

The foregoing restrictions shall not apply to Units owned or leased by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure or in satisfaction of debt. Such Institutional First Mortgagees shall have the right to sell or lease Units they own without having to first offer the same for sale to the Association.

Notwithstanding anything herein contained to the contrary, the Board of Directors, in exercising its rights as provided in this Section 20.1, shall not make any decision in a discriminatory manner, and no decision shall be made on the basis of race, gender, religion, national origin or physical or mental handicap.

- 20.2 Consent of Unit Owners to Purchase or Lease of Units by the Association. The Association shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Owners of a majority of the Units present in person or by proxy and voting at a meeting at which a quorum has been obtained.
- 20.3 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.

OR: 2702 PG: 1940

- 20.4 **Release by the Association of the Right of First Refusal.** The right of first refusal contained in Section 20.1 may be released or waived by the Association only in the manner provided in Section 20.5. In the event the Association shall release or waive its right of first refusal as to any Unit, such Unit may be sold and conveyed free and clear of the provisions of said Section 20.1.
- 20.5 **Certificate of Termination of Right of First Refusal.** A certificate executed and acknowledged by an officer of the Association stating that the provisions of Section 20.1 have been satisfied by a Unit Owner, or stating that the right of first refusal contained therein has been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated, shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate upon request to any unit Owner in respect to whom the provisions of such Section have, in fact, terminated or been waived. The Association may charge a fee in connection with the furnishing of such certificate, which fee shall not be in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the Act (as it is amended from time to time).
- 20.6 **Financing of Purchase of Units by the Association.** The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.
- 20.7 **Exceptions.** The provisions of Section 20.1 shall not apply with respect to any sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation or other entity where the Unit Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity, or to any one or more of the above, (b) the Developer, (c) Master Developer, (d) the Association, (e) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or (f) an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure or in satisfaction of debt; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 20.

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20.8 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer Unit Owner's Unit by gift, to devise said Unit by will, or to have said Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and said Unit subject to, the provisions of this Section 20.

20.9 Mortgage of Units. No Unit Owner shall have the right to mortgage their Unit without the approval of the Association, except to an Institutional First Mortgagee; or the seller of a Unit who takes back a purchase money mortgage to secure a portion of the purchase price ("Approved Mortgagees"). The approval of any other mortgagee may be upon conditions determined by the Board and approval may be withheld in the sole discretion of the Board.

21. 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:

21.1 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.

21.2 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 finds, 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 and to collect such charge in the same manner as the collection of Assessments and to have a lien therefor as elsewhere provided. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform the work necessary to prevent damage to the common elements or to a unit or units.

21.3 Fines. In the event a Unit Owner or occupant 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 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, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Unit Owner or tenant has the right to contest the fine by delivering written notice to the Association within ten (10) days after receipt of the notice imposing the fine. If the Unit Owner or tenant timely and properly objects to the fine, the Board of Directors of the Association shall appoint a Committee of Unit Owners who conduct a hearing within thirty (30) days after receipt of the Unit Owner's or tenant's objection, and shall give the Unit Owner or tenant not less than ten (10) days written notice of the hearing date. At the hearing, the Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The Unit Owner or tenant shall have the right to attend the hearing and to produce evidence on his behalf, and if the Unit Owner or tenant fails to attend then the hearing will be deemed waived and the Board of Directors may ratify the fine without further proceedings. At the hearing the Committee shall ratify, reduce or eliminate the fine and shall give the Unit Owner or tenant written notice of its decision. Any fine shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Committee decision at the hearing. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

21.4 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 the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

21.5 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.

22. Termination of Condominium. The Condominium shall continue until (i) terminated by

casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by a majority of Institutional First Mortgagees. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

23. Additional Rights of Mortgagees and Others.

23.1 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 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.

23.2 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.

24. 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

OR: 2702 PG: 1944

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 or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

25. Additional Provisions.

25.1 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 registered mail 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 to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

25.2 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.

25.3 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.

25.4 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.

- 25.5 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.
- 25.6 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.
- 25.7 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 Exhibit 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.
- 25.8 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.
- 25.9 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.
- 25.10 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 Community 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

OR: 2702 PG: 1946

documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.

- 25.11 Gender: Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 25.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 25.13 Access of Developer to Building and Units. For as long as Developer remains liable to any Unit Owner, or the Condominium Association, under any warranty, whether statutory, express or implied, for act of omission of Developer in the development, construction, sale and marketing of the Condominium, or any Units therein, then Developer and its agents shall have the right, in Developer's sole discretion, and from time to time, to enter the Condominium or any Units 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 shall result in the appropriate warranty being nullified and of no further force or effect.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 13th day of July, 2000.

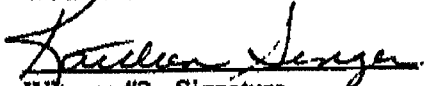
Signed, sealed and delivered
in the presence of:



Witness #1 - Signature

APRIL L. ROWE

Witness #1 - Printed Name



Witness #2 - Signature

KATHLEEN SINGER

Witness #2 - Printed Name

REUVEN HAIM BUILDERS, INC.,
a Florida Corporation

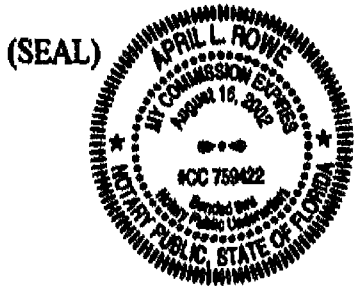
By: 

Jacob Nagar, President

OR: 2702 PG: 1947

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing Declaration of Condominium was acknowledged before me this 3rd day of July, 2000, by Jacob Nagar, who is personally known to me, as President of REUVEN HAIM BUILDERS, INC., a Florida Corporation.



April L. Rowe
Notary Public - Signature
APRIL L. ROWE
Notary Public - Printed Name

My Commission Expires:

OR: 2702 PG: 1948

This instrument prepared by:

Jane Yeager Cheffy
Attorney at Law
2375 Tamiami Trail North
Suite #310
Naples, FL 34103

**LEGAL DESCRIPTION
MALACHITE AT SAPPHIRE LAKES,
A CONDOMINIUM,
BEING PART OF SAPPHIRE LAKES
UNIT 3C, AS RECORDED IN PLAT BOOK 31,
PAGES 9 THROUGH 10 OF THE PUBLIC
RECORDS OF COLLIER COUNTY, FLORIDA.**

Beginning at the southeast corner of Sapphire Lakes Unit 3C, as recorded in Plat Book 31, Pages 9 through 10 of the Public Records of Collier County, Florida;

Thence along the boundary of said Sapphire Lakes Unit 3C, the following Two (2) described courses to a Point that intersects the Hermatite Legal Description, as recorded in Official Records Book 2214, Page 0589 of the Public Records of Collier County, Florida;

- (1) Thence North 61°43'26" West 143.69 feet;
- (2) Thence North 20°46'05" East 106.42 feet, to a Point that intersects the said Hermatite Legal Description;

Thence along the said Hermatite Legal Description, North 23°02'44" East 53.56 feet, to a Point that intersects the boundary of said Sapphire Lakes Unit 3C;

Thence along the boundary of said Sapphire Lakes Unit 3C, the following Six (6) described courses to a Point that intersects the said Hermatite Legal Description;

- (1) Thence North 31°04'15" East 34.54 feet;
- (2) Thence northeasterly and easterly 179.16 feet along the arc of a non-tangential circular curve concave to the southeast having a radius of 255.96 feet through a central angle of 40°06'14" and being subtended by a chord which bears North 51°26'00" East 175.53 feet;
- (3) Thence North 07°15'31" West 46.43 feet;
- (4) Thence northwesterly 147.70 feet along the arc of a non-tangential circular curve concave to the northeast having a radius of 246.00 feet through a central angle of 32°24'03" and being subtended by a chord which bears North 60°15'54" West 145.49 feet;
- (5) Thence South 59°14'43" West 33.15 feet;
- (6) Thence southeasterly 26.26 feet along the arc of a non-tangential circular curve concave to the southwest having a radius of 191.00 feet through a central angle of 07°52'42" and being subtended by a chord which bears South 26°48'56" East 26.24 feet, to a Point that intersects the said Hermatite Legal Description;

Thence along the said Hermatite Legal Description, the following three (3) described courses to a Point that intersects the boundary of said Sapphire Lakes Unit 3C;

- (1) Thence south 56°54'20" West 13.79 feet;
- (2) Thence southeasterly 35.77 feet along the arc of a non-tangential circular curve concave to the southwest having a radius of 239.75 feet through a central angle of 08°32'57" and being subtended by a chord which bears South 13°48'15" East 35.74 feet;
- (3) Thence South 76°32'29" West 135.17 feet, to a Point that intersects the boundary of said Sapphire Lakes Unit 3C;

Thence along the boundary of said Sapphire Lakes Unit 3C, the following Fourteen (14) described courses;

- (1) Thence North 88°55'54" West 5.33 feet, to the northwest corner of Sapphire Lakes Unit 3B, as recorded in Plat Book 27, Pages 72 through 73 of the Public Records of Collier County, Florida;
- (2) Thence northerly and northwesterly 66.81 feet along the arc of a non-tangential circular curve concave to the southwest having a radius of 100.00 feet through a central angle of 38°16'52" and being subtended by a chord which bears North 23°55'24" West 65.58 feet;
- (3) Thence North 43°03'52" West 188.51 feet;
- (4) Thence northwesterly and northeasterly 40.58 feet along the arc of a tangential circular curve concave to the east having a radius of 34.00 feet through a central angle of 68°22'34" and being subtended by a chord which bears North 08°52'48" West 38.21 feet, to the a point of reverse curvature;

- (5) Thence northeasterly and northerly 73.15 feet along the arc of a tangential circular curve concave to the west having a radius of 100.00 feet through a central angle of $41^{\circ}54'38''$ and being subtended by a chord which bears North $04^{\circ}21'02''$ East 71.53 feet;
- (6) Thence North $79^{\circ}16'26''$ East 10.10 feet;
- (7) Thence northeasterly, easterly and southeasterly 515.93 feet along the arc of a non-tangential circular curve concave to the south having a radius of 198.66 feet through a central angle of $148^{\circ}47'57''$ and being subtended by a chord which bears North $87^{\circ}01'38''$ East 382.68 feet;
- (8) Thence South $18^{\circ}42'34''$ East 98.01 feet;
- (9) Thence southeasterly and easterly 104.63 feet along the arc of a tangential circular curve concave to the northeast having a radius of 80.00 feet through a central angle of $74^{\circ}56'16''$ and being subtended by a chord which bears South $56^{\circ}10'42''$ East 97.33 feet;
- (10) Thence North $86^{\circ}21'10''$ East 85.27 feet;
- (11) Thence South $03^{\circ}38'50''$ East 317.74 feet;
- (12) Thence South $86^{\circ}21'10''$ West 80.98 feet;
- (13) Thence westerly and southwesterly 143.43 feet along the arc of a tangential circular curve concave to the southeast having a radius of 129.00 feet through a central angle of $63^{\circ}42'23''$ and being subtended by a chord which bears South $54^{\circ}29'59''$ West 136.16 feet;
- (14) Thence South $22^{\circ}39'22''$ West 157.88 feet, to the Point of Beginning of the parcel herein described;

Subject to easements and restrictions of record.
Containing 5.55 acres more or less.

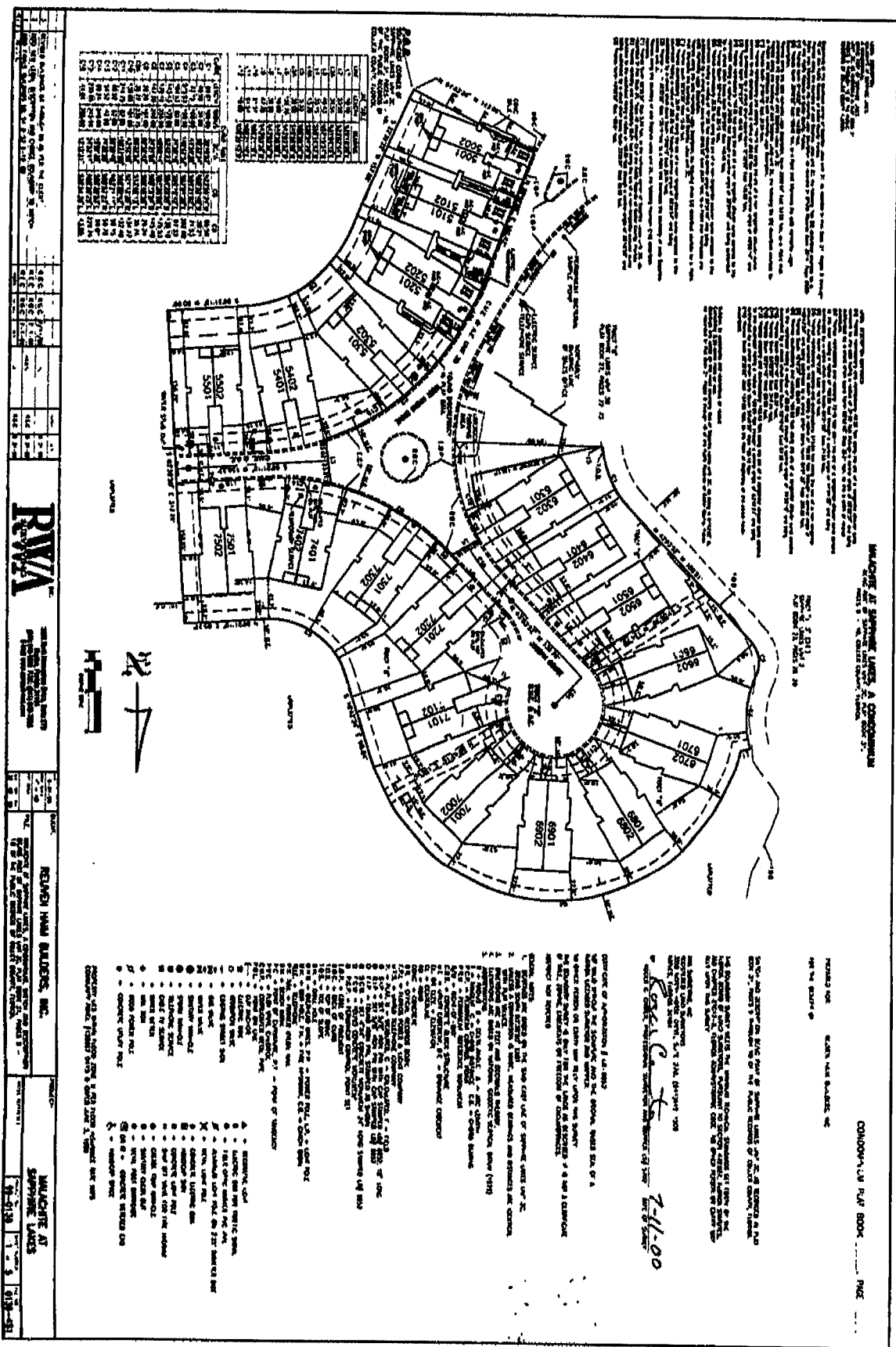
Bearings are based on the most southerly line of Sapphire Lakes Unit 3C, as being N $61^{\circ}43'26''$ W as recorded in Plat Book 31, Pages 9 through 10 of the Public Records of Collier County, Florida.

RWA Surveying, Inc.
Land Surveyors and Mappers
3050 North Horseshoe Drive
Suite 270
Naples, Florida 34104
(941) 649-1509

Florida Certificate of Authorization # 6952

By: *Roger G. Carter* Date: 7-01-2000
Roger G. Carter, Professional Surveyor and Mapper LS # 5702

Ref: 99-0138-4S1

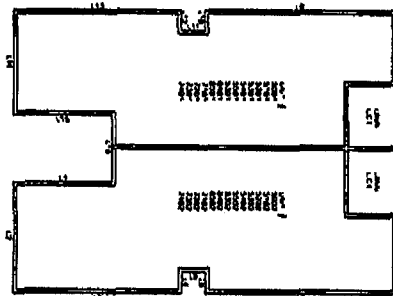
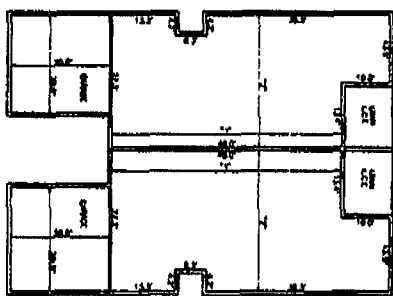


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MAINTENANCE AT SHAWNEE LAKES
REVENUE HALL BUILDING, INC.

REVENUE HALL BUILDING, INC.
MAINTENANCE AT SHAWNEE LAKES

DATE: 7-11-00
BY: [Signature]



DIMENSION TABLE (INTERIOR)

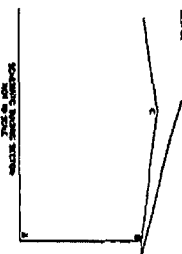
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DIMENSION TABLE (EXTERIOR) FIRST FLOOR

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ELEVATIONS

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WALCHITE AT SAPPHIRE, A CONDOMINIUM

CONDOMINIUM PLAN BOOK PAGE

RWA

REGISTERED ARCHITECTS

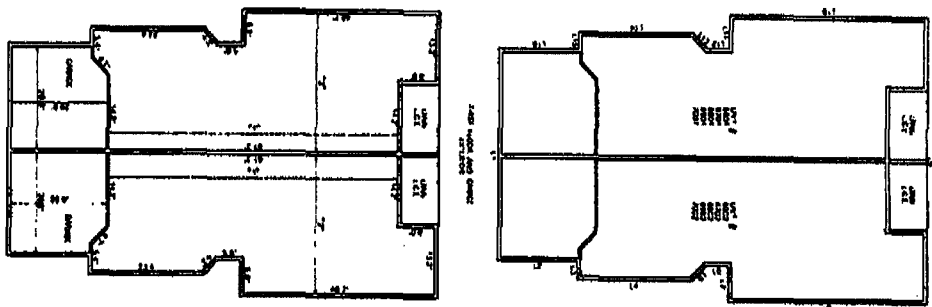
RENEAU HALL BUILDERS, INC.

WALCHITE AT SAPPHIRE LAMES

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12-11-82

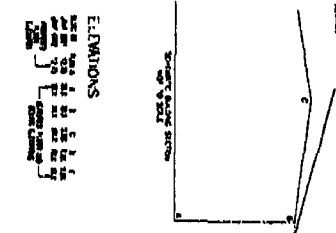


DIVISION TABLE (EXTERIOR) FIRST FLOOR

NO.	DESCRIPTION	AMOUNT
1
2
3
4
5
6
7
8
9
10

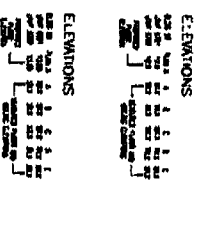
DIVISION TABLE (INTERIOR)

NO.	DESCRIPTION	AMOUNT
1
2
3
4
5
6
7
8
9
10



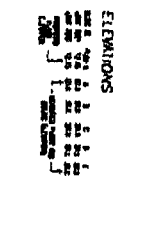
ELEVATIONS

1	...
2	...
3	...
4	...
5	...



ELEVATIONS

1	...
2	...
3	...
4	...
5	...



ELEVATIONS

1	...
2	...
3	...
4	...
5	...

CONSTRUCTION PLAN BOOK PAGE

MAUICHTE AT SAPPHIRE LAKES, A CONDOMINIUM

GENERAL NOTES:

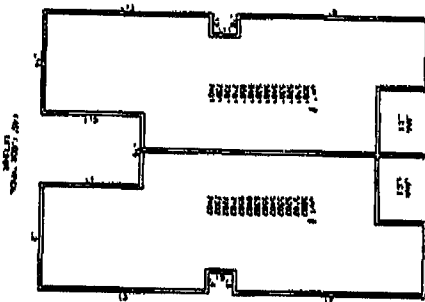
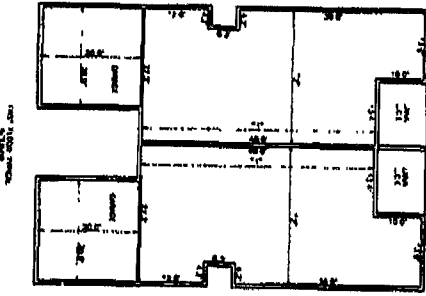
1. REFER TO ALL GENERAL NOTES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE LOCAL HEALTH DEPARTMENT AND LOCAL SANITATION DEPARTMENT.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES AND REGULATIONS.
4. ALL MATERIALS SHALL BE INSPECTED AND APPROVED BY THE ARCHITECT BEFORE INSTALLATION.
5. ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES AND REGULATIONS.
6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES AND REGULATIONS.
7. ALL MATERIALS SHALL BE INSPECTED AND APPROVED BY THE ARCHITECT BEFORE INSTALLATION.
8. ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES AND REGULATIONS.
9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE CODES AND REGULATIONS.
10. ALL MATERIALS SHALL BE INSPECTED AND APPROVED BY THE ARCHITECT BEFORE INSTALLATION.



PREPARED BY

RENDER HARD BUILDING, INC.

MAUICHTE AT SAPPHIRE LAKES



DAVISON TABLE (INTERIOR)

ELEVATIONS

DAVISON TABLE (EXTERIOR) FIRST FLOOR

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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REINFORCED CONCRETE
STRUCTURAL DESIGN

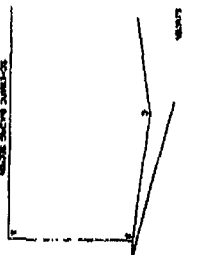
REINFORCED CONCRETE
STRUCTURAL DESIGN

REINFORCED CONCRETE
STRUCTURAL DESIGN

MAQUETTE AT SAPPHIRE, A CONDOMINIUM

CONDOMINIUM PLAN BOOK PAGE

- GENERAL NOTES:
1. REFER TO ALL OTHER DRAWINGS FOR NOTES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



(The space above this line is reserved for recording information.)

CERTIFICATE OF SURVEYOR

As to Malachite at Sapphire Lakes, a Condominium, Buildings 50 of Malachite at Sapphire Lakes, a Condominium according to the Declaration of Condominium thereof recorded at O.R. Book ____, at page ____ in the Public Records of Collier County.

I, Roger G. Carter of Naples, Florida, County of Collier and State of Florida, hereby certify as follows:

- 1. That I am a Professional Surveyor and Mapper authorized to practice in the state of Florida.
- 2. That this Certificate is made as Buildings 50, of Malachite at Sapphire Lakes, a Condominium, according to the Declaration of Condominium thereof recorded at O.R. Book ____, at Page ____ in the Public Records of Collier County, Florida., in compliance with Section 718.104(4)(e) Florida Statutes;
- 3. That the applicable sheets of 99-0138-4S1 Drawing Malachite, sheets 1 and 2 (Exhibit 2) together with the provisions of the Declaration that relate to matters of survey, constitute correct representation of the improvements of units of said Malachite at Sapphire Lakes, a condominium as they now exist and therefore can be determined from them the identification, location, dimensions and size of the common elements of said units and
- 4. That all planned improvements, including landscaping, utility services and access to said units and Common element facilities, with the exception of the recreation area to serve said units have been substantially completed.

DATE: 7-11-00

BY: Roger G. Carter PSM# 5702
RWA Surveying, Inc
Registered Engineers and Surveyors

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me this 11 day of July, 2000 by Roger G. Carter. He (choose one) () is personally known to me or () provided for identification and did take an oath.



Tacia Burghardt
Signature of Notary Public
Tacia Burghardt
Print name of Notary Public (SEAL)
My Commission Expires

(The space above this line is reserved for recording information.)

CERTIFICATE OF SURVEYOR

As to Malachite at Sapphire Lakes, a Condominium, Buildings 51 of Malachite at Sapphire Lakes, a Condominium according to the Declaration of Condominium thereof recorded at O.R. Book _____, at page _____ in the Public Records of Collier County.

I, Roger Carter of Naples, Florida, County of Collier and State of Florida, hereby certify as follows:

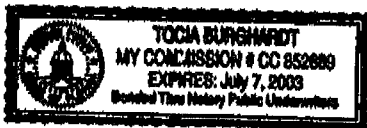
1. That I am a Professional Surveyor and Mapper authorized to practice in the state of Florida.
2. That this Certificate is made as Buildings 51, of Malachite at Sapphire Lakes, a Condominium, according to the Declaration of Condominium thereof recorded at O.R. Book _____, at Page _____ in the Public Records of Collier County, Florida., in compliance with Section 718.104(4)(e) Florida Statutes;
3. That the applicable sheets of 99-0138-4S1 Drawing Malachite, sheets 1 and 2 (Exhibit 2) together with the provisions of the Declaration that relate to matters of survey, constitute correct representation of the improvements of units of said Malachite at Sapphire Lakes, a condominium as they now exist and therefore can be determined from them the identification, location, dimensions and size of the common elements of said units and
4. That all planned improvements, including landscaping, utility services and access to said units and Common element facilities, with the exception of the recreation area to serve said units have been substantially completed.

DATE: 7-11-00

BY: Roger G. Carter PSM# 5702
RWA Surveying, Inc
Registered Engineers and Surveyors

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me this 11 day of July, 2000 by Roger G. Carter. He (choose one) () is personally known to me or () provided for identification and did take an oath.



Tocia Burghardt
Signature of Notary Public
Tocia Burghardt
Print name of Notary Public (SEAL)
My Commission Expires

(The space above this line is reserved for recording information.)

CERTIFICATE OF SURVEYOR

As to Malachite at Sapphire Lakes, a Condominium, Buildings 52 of Malachite at Sapphire Lakes, a Condominium according to the Declaration of Condominium thereof recorded at O.R. Book _____, at page _____ in the Public Records of Collier County.

I, Roger Carter of Naples, Florida, County of Collier and State of Florida, hereby certify as follows:

1. That I am a Professional Surveyor and Mapper authorized to practice in the state of Florida.
2. That this Certificate is made as Buildings 52, of Malachite at Sapphire Lakes, a Condominium, according to the Declaration of Condominium thereof recorded at O.R. Book _____, at Page _____ in the Public Records of Collier County, Florida., in compliance with Section 718.104(4)(e) Florida Statutes;
3. That the applicable sheets of 99-0138-4S1 Drawing Malachite, sheets 1 and 2 (Exhibit 2) together with the provisions of the Declaration that relate to matters of survey, constitute correct representation of the improvements of units of said Malachite at Sapphire Lakes, a condominium as they now exist and therefore can be determined from them the identification, location, dimensions and size of the common elements of said units and
4. That all planned improvements, including landscaping, utility services and access to said units and Common element facilities, with the exception of the recreation area to serve said units have been substantially completed.

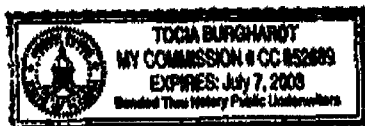
DATE: 7-11-00

BY: Roger G. Carter PSM# 5702
RWA Surveying, Inc
Registered Engineers and Surveyors


STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me this 11 day of July 2000 by Roger G. Carter. He (choose one) () is personally known to me or () provided for identification and did take an oath.

Tocia Burghardt
Signature of Notary Public
Tocia Burghardt
Print name of Notary Public (SEAL)
My Commission Expires



E:\11999 Project\99-0138 Sapphire Lakes Unit 3C\Survey\Condominium Exhibit\CERTIFICATE OF SURVEYOR FOR 52.doc



State of Florida

Department of State

I certify from the records of this office that MALACHITE AT SAPPHIRE LAKES CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on November 28, 1994.

The document number of this corporation is N94000005867.

I further certify that said corporation has paid all fees due this office through December 31, 2000, that its most recent annual report/uniform business report was filed on April 19, 2000, and its status is active.

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

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 300A00038266-071200-N94000005867-1/1, noted below.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twelfth day of July, 2000

Authentication Code: 300A00038266-071200-N94000005867-1/1

OR: 2702 PG: 1959



CR2EO22 (1-00)

Katherine Harris
Katherine Harris
Secretary of State

EXHIBIT "3"

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of MALACHITE AT SAPPHIRE LAKES CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on November 28, 1994, as shown by the records of this office.

The document number of this corporation is N9400005867.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Thirtieth day of November, 1994



CR2EO22 (2-91)

A handwritten signature in cursive script that reads "Jim Smith".

Jim Smith
Secretary of State

FILED
94 NOV 28 11:10 AM
SEVENTH DISTRICT
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION

FOR

MALACHITE AT SAPPHIRE LAKES 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 I

NAME

The name of the corporation shall be MALACHITE AT SAPPHIRE LAKES CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-laws".

ARTICLE 2

PURPOSE

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

ARTICLE 3

DEFINITIONS

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

MALACHITE AT SAPPHIRE LAKES CONDOMINIUM ASSOCIATION, INC.

ARTICLES OF INCORPORATION

Page 1 of 12

ARTICLE 4
POWERS

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

- 4.1 **General.** The Association shall have all of the common law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 **Enumeration.** The Association shall have the powers and duties set forth in the Act and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, 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 the 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-Uses.
- (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) To employ personnel to perform the services required for the proper operation 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 are 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>
Jacob Nagar	8001 Radio Road Naples, Florida 33942

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

President:	JACOB NAGAR 8001 Radio Road Naples, Florida 33942
-------------------	---

Vice-President: RON JEDA
8001 Radio Road
Naples, Florida 33942

Secretary-Treasurer: TERRY A. LURIE
2430 Shadowlawn Drive
Suite 18
Naples, Florida 33962

ARTICLE 9
DIRECTORS

- 9.1 Number and Qualifications. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Association.
- 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 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:

NAME	ADDRESS
JACOB NAGAR	8001 Radio Road Naples, Florida 33942
RON JEDA	8001 Radio Road Naples, Florida 33942
TERRY A. LURIE	2430 Shadowlawn Drive Suite 18 Naples, Florida 33962

ARTICLE 10
INDEMNIFICATION

10.1 Indemnification. 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 attorney's fees and appellate attorney's 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 did not act in good faith or in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (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 person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

- 10.2 **Expenses.** To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including Attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 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 upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified, by the Association as authorized in this Article 10.
- 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.
- 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 11
BY-LAWS

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

ARTICLE 12
AMENDMENT'S

Amendment 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. 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 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 and principal office of this corporation shall be at 8001 Radio Road, Naples, Florida 33942, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent shall be Jacob Nagar, whose address is 8001 Radio Road, Naples, Florida 33942.

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



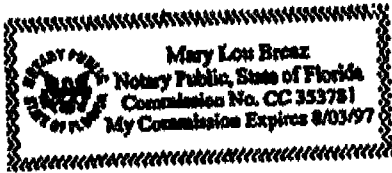
Jacob Nagar

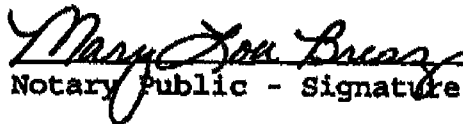
STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 23rd day of November, 1994, by Jacob Nagar, who is personally known to me, and did not take an oath.

(SEAL)

My Commission Expires:





Notary Public - Signature

Mary Lou Breaz
Notary Public - Printed Name
Commission Number: CC-353781

FILED
94 NOV 28 10:10 AM
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**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 the unincorporated portion of the County of Collier, State of Florida, the corporation named in the said Articles has named Jacob Nagar, whose address 8001 Radio Road, Naples, Florida 33942, 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.

Dated this 23rd day of November, 1994.



Jacob Nagar
Registered Agent

OR: 2702 PG: 1972

BY-LAWS
OF
MALACHITE AT SAPPHIRE LAKES 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 Malachite At Sapphire Lakes 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 Malachite At Sapphire Lakes, A Condominium (the "Condominium").
 - 1.1 **Principal Office.** The principal office of the Association shall be at 8001 Radio Road, Naples, Florida 34104, 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.
 - 1.2 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation.
2. **Definitions.** For convenience, the 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 for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. **Members.**
 - 3.1 **Annual Meeting.** The annual members' meeting shall be held 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

OR: 2702 PG: 1973

annual meeting shall be held during the month that shall fall one year following the date of filing of the Declaration, at such time, place and date as the board shall determine.

- 3.2 **Special Meetings.** Special members' meeting 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 or upon receipt of a written application of ten percent (10%) of the voting interest to the Board under Section 718.112(e) Florida Statutes relating to the Budget and Section 718.112(k) Florida Statutes relating to recall of the Board. 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.
- 3.3 **Notice of Meeting: Waiver of Notice.** Written notice of a meeting of members, which shall incorporate an identification of agenda items and state 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 preceding the meeting. The notice of the meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the 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 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.

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

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) 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.

3.3.1 Special Provisions Relating to Notice of Board of Directors. Regular election of the Board of Directors shall occur on the date of the annual meeting. In addition to the foregoing notice provisions, not less than sixty (60) days before a scheduled election, the Association shall mail or deliver to each Unit Owner entitled to vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Secretary not less than forty (40) days before a scheduled election. The Board of Directors shall hold a meeting within five (5) days after the deadline for a candidate to provide notice of intent to run, at which time the Board of Directors shall accept additional nominations. Not less than thirty (30) days before the election meeting, the Association shall then mail or deliver a second notice of the meeting to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates.

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 in excess of 33-1/3% of the votes of members.

3.5 Voting.

(a) Number of Votes. Except as provided in paragraph 3.10 hereof, and except when the vote is to be determined by a percentage of shares of ownership in the Condominium (as contemplated in specific portions of the Declaration), in any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.

(b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy, if allowed, 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.

OR: 2702 PG: 1975

(c) Voting Member. If a Unit is owned by one person, the right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. 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 an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

3.6 Proxies. Votes may be cast in person but not by general proxy, but votes may be cast by limited proxies. However, limited proxies and general proxies may be used for purposes of establishing a quorum. Limited proxies may be used for votes taken to waive or reduce reserve accounts for capital expenditures and deferred maintenance; for votes taken to waive financial statement requirements in accordance with the Act; for votes taken to amend the Declaration, Articles or these By-Laws; or for any other matter for which the members are required or permitted to vote. 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. Notwithstanding this Section 3.6, no proxy, limited or general, shall be used in the election of the Board of Directors.

Any proxy given shall be effective only for the specific meeting for which originally given 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 is 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 set forth in 3.5 above), name the person(s) voting the proxy and the person authorized to vote for such person(s) and filed with the Secretary of the Association before the appointed time of each

meeting for which it is given. Each proxy shall also contain the date, time and place of the meeting for which it is given, and if a limited proxy, shall set forth the matter 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 form of proxy prescribed herein, such forms of limited proxy required by the Act as may be amended from time to time shall prevail where in conflict herewith.

- 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) Call to order by President;
 - (b) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
 - (c) Proof of notice of the meeting or waiver of notice;
 - (d) Reading of minutes;
 - (e) Reports of officers;
 - (f) Reports of committees;
 - (g) Appointment of inspectors of election;
 - (h) Determination of number of Directors to be elected;
 - (i) Election of Directors;
 - (j) Unfinished business;
 - (k) New business;
 - (l) 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 (7) 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.

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 nine (9), directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as proved herein, from time to time upon majority vote of the membership, provided, however, that the number of Directors shall always be an odd number. Directors need not be Unit Owners.
- 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) Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice of such desire to the Secretary of the Association not less than forty (40) days before a scheduled election. Thereafter, the Association shall mail or deliver, along with the second notice of meeting described in Section 3.3.1 hereof, a ballot which shall list all the candidates. Any Unit Owner or other eligible person

OR: 2702 PG: 1978

properly serving notice of candidacy may request that the ballot and notice be accompanied by an information sheet provided by the candidate, which information sheet shall be no larger than 8-1/2 inches by 11 inches. Nominations for Directors and additional directorships created at the election meeting shall be those contained in the ballot only.

- (c) The election shall be by written ballot and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.16 hereof shall be filled by the Developer without the necessity of any meeting.
- (b) Any Director elected by the members (other than the Developer) may be removed by concurrence of a majority of the votes of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of the owners of all Units. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed. The conveyance of all Units owned by a Director in the Condominium (other than appointees of the Developer or Directors who were not Unit Owners) shall constitute the resignation of such Director.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by 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.
- (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

OR: 2702 PG: 1979

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

- 4.4 **Term.** Except as provided herein to the contrary, the term of each Directors' service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided.
- 4.5 **Organizational Meeting.** The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary; provided, however, in the event the organizational meeting shall follow the annual meeting in which the directors were newly elected or appointed, the notice of the annual meeting shall serve as notice of the organizational meeting.
- 4.6 **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency.
- 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. Notice of the meeting shall be given

OR: 2702 PG: 1980

personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency.

- 4.7.1 Meetings, Special Assessments, Rules. Written notice of any meeting of Directors at which nonemergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed or approved, shall be mailed or delivered to the Unit Owner and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen-day (14-day) notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association.
- 4.7.2 Regular Assessments. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.
- 4.7.3 Unit Owner Attendance. Meetings of the Board of Directors and any committee thereof at which a quorum of the members of that committee is present shall be open to all Unit Owners. Unit Owners shall have the right to speak at such meetings with reference to all designated agenda items.
- 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 constitute such Director's waiver of notice of such meeting.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.10 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there

OR: 2702 PG: 1981

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.

- 4.11 Joinder in Meeting by Approval of Minutes. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Director votes against such action or abstains from voting in respect thereto because of an *asserted conflict of interest*. Directors may not vote by proxy or by secret ballot at any meeting of the Board of Directors. A vote or abstention for each Director present shall be recorded in the 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.
- 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.

- 4.16 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the board shall consist of three (3) 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 percent (15%) or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Upon the election of such Director(s), the Developer shall forward to the Division of Florida Land Sales and Condominiums 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 percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have

OR: 2702 PG: 1983

been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) seven (7) years after recording of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even in 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 such notice as required for election of directors as set forth under Section 4.2 hereof, a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

At the time that Unit Owners rather 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 shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable:

- (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 house rules and regulations which have been promulgated.
- (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 by an independent certified public account. All financial records shall be prepared in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amount of assessments. The financial records required hereunder may be provided not later than ninety (90) days after Unit Owners, other than the Developer, elect a majority of the Board of Directors.
- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the common Elements or is ostensibly part of the common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the

mechanical components serving the Improvements and the Condominium Property.

- (k) A list of the names and addresses, of which the Developer had 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 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 fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall exceed the highest amount permitted under the Act (as it**

OR: 2702 PG: 1987

may be amended from time to time) nor shall any fine 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 power 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) 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).
- (r) 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.

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

OR: 2702 PG: 1989

- 6.5 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the 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 their 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

OR: 2702 PG: 1990

set forth in Section 718.504(20) 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 item for which the deferred maintenance expense, or replacement cost exceeds \$10,000.00. The amount of reserves shall be calculated by dividing that estimated replacement cost of each reserve item by its estimated remaining useful life. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of members, 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. Notwithstanding the foregoing, prior to turnover of control of the Association by the Developer to the Unit Owners pursuant to the Act and Section 4.16 hereof, the Developer may vote to waive reserves for the first two (2) years of operation 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.
- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Unit Owners shall consider

and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than a majority vote of all the Units (including Units owned by the Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

(iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors 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 Unit Owners other than the Developer.

(b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 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 Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after ten (10) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments.
- 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 in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late.
- 9.5 Depository. The depository of the Association shall be such bank or banks in the State as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited in the Association's name. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. Reserve funds shall be maintained in a separate account in the Association's name from operating funds.
- 9.6 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate Assessments due for the remainder of the budget year upon filing a claim of lien therefore. The then unpaid balance of the Assessments for

OR: 2702 PG: 1993

the balance of the accelerated period shall be due upon 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 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 in accordance with the Act.
- 9.8 **Insurance or Fidelity Bonding.** The Association shall provided adequate amounts of insurance or fidelity bonding covering all directors, officers, employees, management agents, and other persons who control or disburse Association funds (as defined in Section 718.111 (11) (d), Florida Statutes). The insurance policy or fidelity bond must cover the maximum funds that will be in custody of the Association or its management agent at any one time. The Association shall bear the cost of bonding.
- 9.9 **Accounting Records and Reports.** The Association shall maintain accounting records in the State, according to the 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). The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- a. 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. Expense for lawn care;
 - 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 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.
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

OR: 2702 PG: 1995

amended in the following manner;

- 12.1 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
- 12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:
- (a) by not less than a majority of the votes of 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 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
 - (c) by not less than 100% of the entire Board of Directors.
- 12.3 **Proviso.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance except as required by the Act. 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.

OR: 2702 PG: 1996

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, modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional Rules and Regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
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, review, 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 by Section 718.504 of the Act.
- (o) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall be maintained in the County 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. 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. Arbitration. Any disputes as defined under Section 718.1255 of the Act shall be resolved through non-binding arbitration conducted in accordance with said Section 718.1255 of the Act.

The foregoing was adopted as the By-Laws of Malachite at Sapphire Lakes Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, on the 15th day of July, 2000.

Approved:



President

OR: 2702 PG: 1999

CONSENT OF MORTGAGEE
TO DECLARATION OF CONDOMINIUM OF
MALACHITE AT SAPPHIRE LAKES, A CONDOMINIUM

NAPLES ASSOCIATES, an Ohio general partnership, having its principal office at 1653 Merrimen Street, Suite 115, Akron, OH 44313 (the "Mortgagee") the holder of that certain Mortgage dated June 23, 1995, executed by the Developer, Reuven Haim Builders, Inc., a Florida corporation, to the Mortgagee, and recorded at Official Records Book 2074 at page 73, and re-recorded at Official Records Book 2079, at page 1303 of the Public Records of Collier County, Florida, does hereby consent to and join in the foregoing Declaration of Condominium for Malachite at Sapphire Lakes, a Condominium, thus subordinating its interests in the Security Instruments to the use rights of the individual Unit Owners.

Anything herein to the contrary notwithstanding, this Consent shall not be deemed in any way to obligate Mortgagee to assume or perform any of the obligations of the Developer, as Developer under the Declaration.

Signed, sealed and delivered
in the presence of:

T.S. M
Print Name: TIMOTHY S. MERRYWEATHER

Mortgagee:
Naples Associates, an Ohio general
partnership

Patricia A Vetter
Print Name: PATRICIA A VETTER

By: Thomas F. Merryweather
Print Name: THOMAS F. MERRYWEATHER
Its: General Partner

OR: 2702 PG: 2000

STATE OF OHIO
COUNTY OF Summit

The foregoing Joinder of Mortgagee was acknowledged before me this 13th day of July, 2000, by Thomas Merryweather who is personally known to me, as _____ a general partner of Naples Associates, an Ohio general partnership, the Mortgagee named in the foregoing instrument.

(SEAL)

Patricia A Vetter
Notary Public - Signature
Patricia A Vetter
Notary Public - Printed Name

My Commission Expires:
49 PATRICIA A. VETTER, Notary Public
Residence Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Nov. 20, 2004

MALACHITE AT SAPPHIRE LAKES

**Name and address of lenders holding
mortgage on Association property:**

**Peninsula Bank
3100 South McCall Road
Englewood, Florida 34223**

**Naples Associates
1653 Marimen Street
Akron, Ohio 44313**

OR: 2702 PG: 2001

State of Florida



Department of State

I certify from the records of this office that REUVEN HAIM BUILDERS, INC. is a corporation organized under the laws of the State of Florida, filed on November 14, 1994.

The document number of this corporation is P94000083523.

I further certify that said corporation has paid all fees due this office through December 31, 1999, that its most recent annual report/uniform business report was filed on April 26, 1999 and is delinquent in filing its annual report, as required by law.

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

I further certify that this is an electronically transmitted certificate authorized by Section 15.16, Florida Statutes and authenticated by the code, 800A00038265-071200-P94000083523-1/1, noted below.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Twelfth day of July, 2000

Authentication Code: 800A00038265-071200-P94000083523-1/1

*** OR: 2702 PG: 2002 **



CR2EO22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State