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## DECLARATION OF CONDOMINIUM FOR VISTA III AT HERITAGE BAY, A CONDOMINIUM

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1. Legal Description and Sketch of Condominium
2. Plot Plan and Building Plans with Surveyor's Certificate
3. Articles of Incorporation
4. By-Laws with Rules and Regulations

**DECLARATION OF CONDOMINIUM FOR  
VISTA III AT HERITAGE BAY, A CONDOMINIUM**

Lennar Homes, LLC, a Florida limited liability company ("**Developer**"), does hereby declare as follows:

1. **Introduction and Submission.**

1.1. **The Land.** Developer owns (or will own) the fee simple title to that certain land located in Collier County, Florida, as more particularly described in **Exhibit 1** attached hereto (the "**Land**").

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

1.3. **Name.** The name by which this condominium is to be identified is Vista III at Heritage Bay (the "**Condominium**").

2. **Definitions.** The following terms used in this Declaration and the exhibits hereto shall have the following meanings, unless the context in which they are used clearly requires a different meaning:

"**Act**" means the Florida Condominium Act (currently Chapter 718 of the Florida Statutes). Unless provided otherwise, the provisions of the Act, as amended from time to time, shall govern the Condominium.

"**Articles**" means the Articles of Incorporation of Association as amended from time to time, a copy of which is attached hereto as **Exhibit 3**.

"**Assessment(s)**" means a share of the funds required for the payment of Common Expenses which, from time to time, is assessed against the Unit Owner. The term Assessment shall include a Special Assessment.

"**Association**" means Vista III at Heritage Bay Condominium Association, Inc., a Florida corporation not-for-profit, the entity responsible for the operation of the Condominium.

"**Association Property**" means that property, real and personal, in which title or ownership is vested in Association for the use and benefit of its members. Association, upon approval by a majority of the Board may purchase or lease computer or similar equipment at any time if required or deemed beneficial for operation of the Condominium. Association shall have the right, but not the obligation, to acquire Association Property in its own name. Association may sell or transfer its interest in such Association Property.

"**Board**" means the Board of Directors of Association.

"**Building**" means a structure in which the Units are located on the Condominium Property. The Condominium shall contain Five (5) Buildings.

"**By-Laws**" means the By-Laws of Association, as they exist from time to time, a copy of which is attached hereto as **Exhibit 4**.

"**Cable Services**" shall mean "basic service tier" as described in Section 623(b)(7)(A) of the Cable Television Consumer Protection Act of 1992, video programming services offered on a per-channel or per-program basis, video programming services offered in addition to basic service tier, any method of delivering video programming to Units including, without limitation, interactive video programming, and any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel. By way of example, and not of limitation, the term Cable Services may include cable television, satellite master antenna television, multipoint distribution systems, video dialtone, open video system or any combination thereof.

**"Common Elements"** shall have the meaning set forth in Section 3.5 hereof.

**"Common Expenses"** means all expenses and assessments properly incurred by Association for the Condominium, including but not limited to any item designated as a common expense by the Act, this Declaration, or the By-Laws. Without limiting any other provision hereof, Common Expenses may include, at the Board's option, any one or more of the following: (a) the costs of on-site managers, secretaries, concierges and/or other employees to provide services designated or requested by the Board; and (b) the costs of purchasing or leasing computer equipment for Association.

**"Common Surplus"** means the excess of all receipts of Association collected on behalf of the Condominium including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the Common Expenses.

**"Condominium"** shall have the meaning set forth in Section 1.3 hereof.

**"Condominium Documents"** means this Declaration and all of the exhibits hereto, as they may be amended from time to time.

**"Condominium Parcel"** means a Unit together with the undivided share in the Common Elements which is appurtenant to such Unit.

**"Condominium Property"** means the Land and the personal property that are subject to condominium ownership under this Declaration, all improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

**"Construction Matters"** shall have the meaning set forth in Section 32 hereof.

**"County"** shall mean Collier County, Florida.

**"Data Transmission Services"** shall mean (i) internet access services and (ii) enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

**"Declaration"** means this instrument as it is amended from time to time.

**"Defendant"** shall have the meaning set forth in Section 32 hereof.

**"Developer"** means Lennar Homes, LLC and its respective successors and such of its respective assigns as to which the rights of Developer hereunder are specifically assigned; provided however, a Unit Owner shall not solely by the purchase of a Condominium Parcel be deemed a successor to, or assignee of, the rights of Developer under this Declaration unless such Unit Owner is specifically so designated as such successor to, or assignee of, such rights in the respective instrument of conveyance or any other instrument executed by Developer. Developer may also assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such partial assignment, the assignee shall not be deemed Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

**"Directors"** shall mean the members of the Board.

**"Division"** means the Division of Florida Land Sales, Condominiums and Mobile Homes.

**"Eligible Holder"** shall mean a first mortgage holder that has given notice to the Association in accordance with these Legal Policy Requirements, Appendix 24, Section 9(a).

**"Families"** shall have the meaning set forth in Section 15.17 hereof.



**"Improvements"** mean all structures and artificial changes to the natural environment on the Condominium Property including, but not limited to, the Building.

**"Initial Capital Contribution"** shall have the meaning set forth in Section 10.6 hereof.

**"Institutional First Mortgagee"** shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Unit or Condominium Parcel or (ii) Developer and its affiliates, to the extent Developer or its affiliates finances the purchase of a Unit or Condominium Parcel initially or by assignment of an existing mortgage.

**"Insurance Trustee"** shall have the meaning set forth in Section 12.1 hereof.

**"Insured Property"** shall have the meaning set forth in Section 12.3.1 hereof.

**"Land"** shall have the meaning set forth in Section 1.1 hereof.

**"Landscaping"** shall mean all landscaping within the Condominium.

**"Limited Common Elements"** means those Common Elements which are designated by this Declaration for the exclusive use of a certain Unit or Units to the exclusion of other Units.

**"Mailbox"** shall have the meaning set forth in Section 3.6.4 hereof.

**"Monitoring System"** shall mean any electronic surveillance and/or monitoring system intended to control access, provide alarm service, and/or enhance the welfare of the Condominium. By way of example, and not of limitation, the term Monitoring System may include a central alarm system, electronic entrance gates, gatehouses, roving attendants, wireless communication to Units, or any combination thereof. THE PROVISION OF A MONITORING SYSTEM SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE CONDOMINIUM. DEVELOPER, AND ASSOCIATION DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY MONITORING SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE MONITORING SERVICE IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY UNIT OWNER AND THE OCCUPANT OF EACH UNIT ACKNOWLEDGES THAT DEVELOPER AND ASSOCIATION, THEIR RESPECTIVE EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF UNIT OWNERS OR UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN UNITS. DEVELOPER AND ASSOCIATION WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.

**"Rules"** means any rules and regulations duly promulgated from time to time by the Board pursuant to its powers under any of the Condominium Documents.

**"Special Assessment"** means any Assessment levied against Unit Owners other than the Assessment required by a budget adopted annually.

**"Telecommunications Provider"** shall mean any party contracting with Association to provide Unit Owners with one or more Telecommunications Services. Developer may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Data Transmission Services, one Telecommunications Provider may provide Association such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such Data Transmission Services.

**"Telecommunications Services"** shall mean delivered entertainment services; all services that are typically and in the future identified as telecommunication services; Telephony Services; Cable Services; and Data Transmission Services. Without limiting the foregoing, such Telecommunications Services include the

development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

**“Telecommunications Systems”** shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to the Condominium. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, pedestals, wireless cell sites, computers, modems, satellite antenna sites, transmission facilities, amplifiers, junction boxes, trunk distribution, feeder cables, lock boxes, taps, drop cables, related apparatus, converters, connections, head-end antennas, earth stations, appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all or a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

**“Telephony Services”** shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA and interLATA voice telephony and data transmission.

**“Title Documents”** shall have the meaning given to such term in Section 42 herein.

**“Toll Calls”** shall have meaning given to such term by the Florida Public Service Commission and/or the Federal Communications Commission.

**“Turnover Date”** shall have the meaning given such term in the By-Laws which are attached hereto as **Exhibit 4**. Without limiting the foregoing, Developer shall never be obligated to turnover Association prior to the date currently required by law.

**“Unit”** means a part of the Condominium Property which is subject to exclusive ownership and which is further described in Section 3.4 hereof.

**“Unit Owner”** or **“Owner”** means the record owner(s) of legal title to a Condominium Parcel.

**“Use Fees”** shall have the meaning set forth in Section 10.8 hereof.

**“Utilities”** shall include, but not be limited to, Telecommunication Services, gas, electricity, water and sewage and garbage and trash disposal. The inclusion of any of the foregoing in the description of Utilities is for illustration purposes only, and not a guaranty that any of such services will be available to the Condominium.

**“Voting Interest”** shall mean the voting rights appurtenant to each Unit, which is one (1) vote per Unit regardless of the number of Unit Owners with respect to such Unit.

Any initially capitalized term used herein not defined above shall have the meaning set forth in the Master Declaration.

### 3. Description of Condominium.

3.1. **Location and General Description.** The Condominium Property is situated in Collier County, Florida, and consists of Five (5) Buildings containing a total of Forty-six (46) Units and the Common Elements therein. Each Unit is identified on **Exhibit 2** by a unique building and unit number. Other improvements included in the Condominium are landscaping and all underground structures and improvements which are not part of or located within the Building, such as wires, cables, drains, pipes, ducts, conduits, valves and fittings.

3.2. **No Timeshares.** No timeshare estates will or may be created with respect to Units in this Condominium.

3.3. Survey and Graphic Description. Exhibit 2 to this Declaration contains the plot plans, building plans, graphic descriptions of the improvements, including the Units, and a Surveyor's Certificate for the Condominium Property. Exhibit 2 to this Declaration, together with this Declaration, identifies the Common Elements and each Unit in the Condominium and their relative size and location. Any reference to Exhibit "2" shall also be construed to refer to Exhibit "B" which is the Condominium Survey Plat.

3.4. Units. The Condominium contains a total of Forty-six (46) Units which are located and individually described in Exhibit 2 hereto. The boundaries of each Unit are as follows:

3.4.1. Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

3.4.1.1. Upper Boundaries. The horizontal plane of the lowest surface of the unfinished ceiling of the unit.

3.4.1.2. Lower Boundaries. The horizontal plane of the highest surface of the unfinished floor slab (which will be deemed to be the floor of each Unit in the Condominium).

3.4.1.3. Interior Divisions. Except as provided in Subsections 3.4.1.1 and 3.4.1.2 above, no part of the floor of the top story of a two-story Unit, ceiling of the bottom story of a two-story Unit, or stairwell adjoining the two (2) floors or structural interior walls shall be considered a boundary of the Unit.

3.4.2. Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the interior unfinished surfaces of the plasterboard walls bounding the unit as shown and depicted in Exhibit 2 extended to an intersection with each other and with the upper and lower boundaries. Any non-load bearing portion of a perimeter wall inside the perimetrical boundary of a Unit shall be deemed a part of the Unit.

3.4.3. Apertures. Where there are apertures in any boundary including, but not limited to, windows, doors, and/or screens, such boundaries shall be extended to the interior unfinished surfaces of the coverings of such openings and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware thereof are excluded from the unit.

3.4.4. Balconies, Patios, Terraces and Lanais. Balconies, patios, terraces and lanais, if any, shall not form a part of a Unit as such areas are Limited Common Elements.

3.4.5. Heating/Air Conditioning Equipment and Water Heater. The heating/air conditioning equipment and water heater serving a Unit shall form a part of the Unit where such equipment is located. The maintenance of any such equipment shall be the sole responsibility of the Unit being served.

3.4.6. Exceptions. Any piping, wiring, ducts or other utility installations which are located within one Unit but which service other Units or the Common Elements and the reinforced concrete portions of any load-bearing columns or walls within a Unit shall be Common Elements.

3.4.7. Entrances. The entrance to each Unit, as shown in Exhibit 2 hereto, shall be a Limited Common Element of the Unit which such entrance exclusively serves.

3.4.8. General. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units shall control in determining the boundaries of a Unit, except that the provisions of Sections 3.4.1 and 3.4.2 above shall control unless specifically depicted and labeled otherwise on such survey.

3.5. Common Elements. The Common Elements include:

3.5.1. The portions of the Condominium Property which are not included within the Units.

3.5.2. Easements through Units for conduits, ducts, plumbing, pipes, wiring and other facilities for the furnishing of Utilities and other services to Units and Common Elements.

3.5.3. An easement of support in every portion of the Unit which contributes to the support of the Building.

3.5.4. The property and installations required for the furnishing of Utilities and other services to more than one Unit or to the Common Elements.

3.5.5. Limited Common Elements; provided, however, Limited Common Elements are not accessible by all Unit Owners.

3.5.6. Fixtures owned or held for the common use, benefit and enjoyment of all Unit Owners in the Condominium.

3.5.7. Meter rooms, electrical rooms and mechanical rooms, if any.

3.6. Limited Common Elements. Each Unit shall have certain Limited Common Elements appurtenant thereto as follows:

3.6.1. Balconies, Patios, Terraces and Lanais. Balconies, patios, terraces and lanais which are accessible from a Unit shall be Limited Common Elements appurtenant to the Unit and for the exclusive use of the Unit Owner owning such Unit. There is no guarantee that any Unit shall have any specific view.

3.6.2. Assigned Parking Space. Each Unit shall be entitled to the exclusive use of one (1) assigned parking space that is assigned to that Unit. Each assigned parking space shall be identified by the Arabic number assigned to such space as set forth in the Survey Plat. After exclusive use of any such parking space is assigned by Developer to a Unit, it may not be conveyed, assigned or encumbered except as an appurtenance to the Unit to which it is assigned.

3.6.3. Air Space and Area for Air Handling Compressor Equipment. The right of exclusive use of the air space and area of the land adjacent to each Unit (or on the slab adjacent to the Unit located below such Unit with respect to second floor Units) occupied by the air handling compressor equipment constituting a part of and serving a Unit shall be a Limited Common Element appurtenant to the Unit.

3.6.4. Mailboxes. Each Unit shall be assigned one (1) mailbox (each, a "Mailbox"). Upon such assignment, the Mailbox so assigned shall be deemed a Limited Common Element of the Unit and the Unit Owner's right to use such Mailbox shall become an appurtenance to the Unit. The exclusive use of any such Mailbox may not be conveyed or assigned to another Unit or Unit Owner.

3.6.5. Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one (1) Unit or more than one (1) Unit, shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by such Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board and shall be binding and conclusive when so made.

3.7. Easements. The following easements are hereby created (in addition to any easements created under the Act and any easement affecting the Condominium Property and recorded in the Public Records of County).

3.7.1. 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.

3.7.2. Utilities and Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for Utilities, other services, and drainage in order to serve the Condominium and/or members of Association. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such Utilities, other services or drainage facilities or the use of these easements.

3.7.3. Encroachments. An easement for the unintentional and non-negligent encroachment by any Unit upon any other Unit or Common Element, or vice versa, for any reason not caused by or resulting from the willful or negligent act of any Unit Owner, including without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachment, as an easement appurtenant to the encroaching Unit or other improvement, to the extent of such encroachment. Encroachments may result from (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 Association, and/or (iv) any repair or restoration of the Improvements (or any portion thereof) 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.

3.7.4. Ingress and Egress. Non-exclusive easements in favor of each Unit Owner and resident, their guests and invitees, and the unit owners, residents, guests and invitees of the Other Condominiums 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. Each Unit Owner shall have reasonable access to the public roads from the Condominium. None of the easements specified in this Section shall be encumbered by any leasehold or lien other than those on the Condominium Parcels.

3.7.5. Construction; Maintenance. 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, of any Improvements or Unit located or to be located thereon.

3.7.6. Use of the Condominium. As long as Developer, its successors, assigns or nominees owns any portion of the property that comprises or may comprise part of this Condominium, Developer, its agents, nominees, designees, successors, and assigns, shall have the right to use portions of the Common Elements of the Condominium for marketing and sales purposes.

3.7.7. Additional Easements. Developer and Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints Developer and Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other Utilities or service easements, or relocate any existing easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as Developer or Association shall deem necessary or desirable for the proper operations and maintenance of the

improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the ongoing development of the Condominium, or for the purpose of carrying out any provisions of this Declaration or otherwise, 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. Association has the authority without the joinder of any Unit Owners, to grant, modify or move any easement in and about the Common Elements.

3.7.8. Water Transmission and Distribution Facilities Easement and Repair. To the extent that any water and sewer facilities are to be provided or maintained by the City or County, Developer hereby grants and conveys to City and/or County (as applicable), their respective successors and assigns, the non-exclusive right, privilege and easement to construct, re-construct, lay, install, operate, maintain, relocate, repair, replace, improve and inspect water transmission and distribution facilities and sewer collection facilities and all appurtenances thereto, and all appurtenant equipment, with the full right of ingress thereto and egress therefrom, within the Condominium Property (excluding such facilities located inside a Unit) in accordance with plans approved by Developer or Association.

3.7.9. Blanket Easement in Favor of District. The District shall also have blanket easements necessary for District operations above, across, and under the Condominium.

3.7.10. Public Easements. Police, fire, sanitation, school transportation, health, water, sewer and other public service and utility company personnel and vehicles shall have a non-exclusive easement for ingress and egress over and across the Common Elements. The City shall also have a non-exclusive easement for ingress and egress over and across the Common Elements.

3.7.11. Reservation of Right for Developer to Grant Additional Easements. Developer shall have the right to grant any additional easements over the Condominium Property that Developer determines are necessary for the continued development and operation of this Condominium. Developer may grant, modify, move and/or vacate such easements, without the joinder of Unit Owners, Association or any lender. By way of example and not as a limitation, Developer may grant easements to itself or others for pedestrian or vehicular ingress and egress across the roads within the Condominium Property. This Section may not be amended by anyone other than Developer without Developer's joinder.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, 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, membership in Association designated in this Declaration, with the full voting rights appertaining thereto, and except as provided herein, the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from and shall pass with the title to the Unit, whether or not separately described. All of these aforescribed appurtenances to a Unit, except as elsewhere 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.

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

5.1. Percentage Ownership and Shares. Each Unit, regardless of size, has an equal undivided percentage interest in the Common Elements and Common Surplus, and shall share equally in the Common Expenses. Each Unit's undivided share in the Common Elements is determined by dividing the number one (1) by the total number of Units comprising the Condominium. Accordingly, the undivided share in the Common Elements appurtenant to each Unit in the Condominium is 1/46, and each Unit Owner will be responsible for a proportionate share of the Common Expenses and will own a proportionate share of the Common Surplus equal to such undivided share in the Common Elements.

5.2. Voting. Each Unit shall be entitled to one (1) vote to be cast by its Unit Owner(s) in accordance with the provisions of the By-Laws and Articles. Each Unit Owner shall be a member of Association.

6. Amendments.

6.1. Amendment by Association.

6.1.1. Proposal. Amendments to this Declaration may be proposed by the Board by resolution adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or by the Owners of a majority of the Units, whether by vote of such Owners as members of Association at a special or regular meeting of the members or by written instrument signed by them. Any amendment to this Declaration so proposed by the Board or members of Association shall be transmitted to the President of Association, or, in the absence of the President, to a Vice President or other acting chief executive officer.

6.1.2. Notice. Notice of the subject matter of the proposed amendment to this Declaration shall be included in the notice of any regular or special meeting of Association at which such proposed amendment is to be considered.

6.1.3. Adoption. Except as elsewhere provided, approval of an amendment must be by affirmative vote of:

6.1.3.1. Unit Owners owning in excess of fifty percent (50%) of the Voting Interests represented at any meeting at which a quorum has been attained and by not less than sixty-six and two-thirds percent (66-2/3%) of the Board; or,

6.1.3.2. Unit Owners, owning not less than eighty percent (80%) of the Voting Interests represented at any meeting at which a quorum has been attained; or,

6.1.3.3. Prior to the date upon which Unit Owners other than Developer control the Board, one hundred percent (100%) of the Board. Notwithstanding the foregoing, if the Act requires Unit Owner approval for the amendment being considered, then the amount of Unit Owner approval required under the Act will also be necessary for the approval of the amendment.

6.1.4. Not Present. Directors not present in person at the meeting considering the amendment may express their agreement or disagreement in writing, provided that the same is delivered to the Secretary at or prior to the meeting. Such agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.

6.2. By Developer. For so long as Developer holds any Units in the Condominium for sale in the ordinary course of business, Developer may, without joinder or consent of Association or any Unit Owner or mortgagee, adopt and record an amendment to this Declaration for the purpose of correcting a defect, error or omission in or of this Declaration not materially affecting the rights of Unit Owners, lienors or mortgagees. Without in any way limiting the generality of the foregoing, and except as prohibited by the Act as it exists on the date hereof (e.g., those actions governed by Section 718.110(4) and (8) of the Florida Statutes (2005)), as long as Developer owns one or more Units for sale in the ordinary course of business, Developer shall have an absolute right to make any amendment to this Declaration, including, without limitation, any amendments that are requested or required by any Institutional First Mortgagee or prospective Institutional First Mortgagee or any other governmental or quasi-governmental body which owns or expects to own one or more institutional first mortgages on Units or to insure the payment of one or more such mortgages to enhance the marketability of its first mortgages on Units to one or more of the foregoing.

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

6.4. Procedure. The procedure for adopting amendments and the form of all amendments shall be in conformance with the requirements of the Act.

6.5. Restrictions on Amendments.

6.5.1. 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 percentage by which the Unit Owner shares the Common Expenses and owns the Common Elements and Common Surplus, unless sixty-seven (67) percent of the total Voting Interests of Association and fifty-one (51%) percent of Eligible Holders, including all of the Voting Interests of Units affected by such amendment join in the execution of the amendment; provided, however, no approval shall be required by Unit Owners if such amendment is required by any governmental entity having jurisdiction over the Condominium.

6.5.2. 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 Developer, without the written consent of Developer. This provision may not be amended.

6.5.3. No amendment shall materially affect the rights or interests of Institutional First Mortgagees without their prior consent, which shall be evidenced as provided in the Act and which shall not be unreasonably withheld. It shall be presumed that, except as to those matters set forth in Sections 718.110(4) and (8) of the Florida Statutes (2005), amendments to the Declaration do not affect the rights or interests of Institutional First Mortgagees.

7. Maintenance and Repairs. Responsibility for maintenance, repairs and replacements of Condominium Property and property of Unit Owners located or situated within the Condominium shall be as follows:

7.1. Units. Each Unit Owner shall maintain, repair and replace, as necessary and whether ordinary or extraordinary, all portions of his Unit, including but not limited to fixtures, entrances, screens, both sides of windows accessible from the Unit (*e.g.*, windows accessible from a balcony or patio, if any, are the responsibility of Unit Owner), all screen doors, and all other doors and door hardware within or affording access to a Unit, that portion of the mechanical, electrical (including all wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment (including the air handling equipment exclusively serving a Unit) within the Limited Common Elements of such Unit), thermostats, fixtures and outlets, smoke alarms, appliances, carpets and other floor covering lying within the boundaries of the Unit, all interior surfaces including interior partitions (and, in general, the entire interior of the Unit) at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Windows which are not accessible to Unit Owners (by way of example, the exterior of any window that cannot be reached from the balcony) shall be washed by Association and the cost thereof shall be a Common Expense. Notwithstanding the obligation of Unit Owners for maintenance, repair and replacement of and in Units, the proceeds of all insurance awards or payments under insurance carried by Association for loss of or damage to or within Units (if any such insurance is available) shall be applied against repairs and replacements to the extent that such award or payments exceed the deductible provisions of such insurance. All maintenance, repairs and/or replacements for which Unit Owner is responsible and obligated to perform, which, if not performed or omitted, would affect other Units or Common Elements, shall be performed promptly as the need arises. If a Unit Owner fails to perform promptly his or her responsibilities of repair, maintenance and replacement, Association shall be entitled to seek all remedies available at law, including the right to impose fines and/or to take legal action to require the Unit Owner to perform the responsibilities. Association shall be entitled to, but not obligated to, perform the necessary work at the cost of the Unit Owner and shall be entitled to access the Unit for that purpose. Association reserves the right to, but is not obligated to, enter into a service contract with an entity that will be available to provide minor maintenance or repair services to the electrical, plumbing, and heating and air-conditioning equipment. The service contract may also provide for minor maintenance and repair services to all appliances originally provided by Developer. There is no guarantee that the service contract will be in place or that all of the items listed will be covered under the service contract. The Unit Owner will continue to be responsible for the maintenance and repair of any item not covered under a service contract. The cost of a service contract, if in place, will be a Common Expense of Association.



7.2. Air Conditioning Air Handling Equipment. As provided in Section 3.4.5 hereof, the air conditioner air handling equipment is deemed to be included as part of the Unit it exclusively serves; accordingly, the maintenance obligations set forth in Section 7.1 above apply to air conditioner air handling equipment. The obligation to maintain and repair any heating and air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units shall be the responsibility of the applicable Unit Owner(s), individually, and not Association, without regard to whether such items are included within the boundaries of the Unit(s).

7.3. Limited Common Elements.

7.3.1. General Maintenance Requirements. Each Unit Owner shall maintain, repair and replace, as necessary and whether ordinary or extraordinary, all non-structural portions of Limited Common Elements exclusively (or non-exclusively in the case of a fence) serving his or her Unit, excluding Parking Areas and Mailboxes including, but not limited to fixtures, light bulbs, ceiling fans, screen doors and screening, all garden items and the grass, plants, shrubs and flowers within such Limited Common Element, if enclosed by a fence or a wall, if applicable, and all other doors and gates, if applicable, within or affording access to a Limited Common Element, that portion of the electrical (including wiring), plumbing, if any (including fixtures and connections), fixtures and outlets, appliances, floor covering lying within the boundaries of the Limited Common Element, all interior surfaces (and, in general, the entire interior of the Limited Common Element) at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. If a Unit Owner fails to perform promptly his or her responsibilities of repair, maintenance and replacement of Limited Common Elements, Association shall be entitled to seek all remedies available at law, including the right to impose fines and/or to take legal action to require the Unit Owner to perform the responsibilities. Association shall be entitled to perform the necessary work at the cost of the Unit Owner and shall be entitled to access to the Limited Common Element for that purpose or for the repair, replacement, and maintenance of the Limited Common Element and other facilities.

7.3.2. Balconies, Patios, Terraces and Lanais. The Units may have access to a patio, balcony or terrace. The Unit Owner shall be responsible for maintenance and care of the balconies, patios, terraces and lanais, including, without limitation, all wiring, electric outlets, lighting fixtures, flooring, and screening, if applicable. A Unit Owner may install floor coverings (e.g., tile) within a balcony and/or patio after obtaining the prior written approval of the Board as more particularly explained in Section 15.19 hereof. The Board shall be responsible for approving the design, structural integrity, aesthetic appeal and construction details, or otherwise, which approval may be unreasonably withheld. No changes whatsoever can be made to these areas without the permission of Association, which may be withheld for any reason. Although these balconies, patios, terraces and lanais may appear to be part of the applicable Unit, such Balconies, Patios, Terraces and Garages must be accessible at all times to Association, maintenance persons such as window washers, police, fire rescue workers and such other persons as Association may allow access for the safety, welfare or health of the Unit Owners and/or Association. There is no guarantee that the balconies, patios, terraces and lanais will be free from noise or private. Unless damage is caused due to the Unit Owner's negligence, Association shall be responsible for maintaining all structural components of the balconies, patios, terraces and lanais, including, without limitation, any rebar running through or underneath such facilities, the post and the below ground footers that stabilize the posts that support the overhang, if any. Each unit owner is required to keep any assigned parking space free from dirt, grease and grime. The Association as a common expense is required to repair and replace any driveway pavement surface.

7.3.3. Mailboxes, and other Limited Common Elements. Unless otherwise provided in this Declaration, Association shall be responsible for performing necessary maintenance, repairs and replacements, and keeping in clean and orderly condition, Mailboxes, or other facilities, if any, designated herein as Limited Common Elements, and the cost of the same shall be treated as Common Expenses assessed against all Unit Owners.

7.3.4. Failure to Perform Responsibilities. If a Unit Owner fails to perform promptly his or her responsibilities of repair, maintenance and replacement of Limited Common Elements, Association shall be entitled to seek all remedies available at law, including the right to impose fines and/or take legal action to require the Unit Owner to perform the responsibilities. Association shall be entitled to perform the necessary work at the cost of the Unit Owner and shall be entitled to access to all Limited Common Elements for

that purpose or for the repair, replacement or maintenance of all Limited Common Element screening and other facilities.

7.4. Areas Outside Buildings. All exterior Condominium Property not within the boundaries of the Buildings hereof shall be operated, maintained, replaced and repaired by the Association. Such operation and maintenance shall include, but not be limited to, the cost for insurance, landscaping, pavement replacement, directional signs, and shrubbery. The items to be maintained by Association shall include, but not be limited to, items such as the parking areas, driveways, roads, fences, and mailboxes if located outside the boundaries of the Buildings, if any.

7.5. Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) if proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements and Limited Common Elements (other than certain of the Limited Common Elements as provided above, and otherwise as provided in this Declaration) shall be performed by Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners. In order to operate the Condominium, it is possible that holes may be cut in walls to facilitate the placement of equipment benefiting the Condominium. Further, due to the location of these areas, it is possible that noise or vibration of equipment may be heard or felt inside the Units. The Condominium may be designed with a roof membrane. The roof may contain hooks or other apparatus in the floor or walls that will allow equipment to be used to clean windows of the Condominium. When windows are cleaned, there may be drops or swings placed on the roof. Trellises, if any, forming part of the roof shall be maintained, along with the rest of the roof by Association.

7.6. Association's Right of Access to Units. Association has the irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements or Limited Common Elements, or for making emergency repairs which are necessary to prevent damage to the Common Elements or Limited Common Elements or to another Unit or Units.

7.7. Light Fixtures. Developer or its designee, shall have the right but not the obligation, to cause those electric light fixtures which may be attached to the front exterior of the Building between Units, if any, plus those electric street lights adjoined or adjacent to each Building, if any, to be turned on and off via an automatic device. Association shall be responsible for the cost of the electricity, maintenance, repair and replacement of all parts of the electric light fixtures, the street lights and the automatic device. The light fixtures are placed on the Building immediately outside the front exterior of each Unit. The replacement and maintenance of these fixtures, as well as the cost of electricity, shall be an expense to the Unit Owner.

7.8. Requirements. All work performed on the Condominium Property or any portion thereof shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by entities and/or individuals duly insured, licensed, if applicable, and qualified to perform such services.

7.9. Affirmative Obligation of Association. In the event that Association believes that Developer has failed in any respect to meet Developer's obligations under this Declaration or has failed to comply with any of Developer's obligations under law or the Common Elements or Limited Common Elements are defective in any respect, Association shall give written notice to Developer detailing the alleged failure or defect. Association agrees that once Association has given written notice to Developer pursuant to this Section, Association shall be obligated to permit Developer and its agents to perform inspections of the Common Elements or Limited Common Elements and to perform all tests and make all repairs/replacements deemed necessary by Developer to respond to such notice at all reasonable times. Association agrees that any inspection, test and/or repair/replacement scheduled on a business day between 9 a.m. and 5 p.m. shall be deemed scheduled at a reasonable time. The rights reserved in this Section include the right of Developer to repair or address, in Developer's sole option and expense, any aspect of the Common Elements or Limited Common Elements deemed defective by Developer during its inspections of the same. Association's failure to give the notice and/or otherwise comply with the provisions of this Section will damage Developer. At this time, it is impossible to determine the actual damages Developer might suffer. Accordingly, if Association fails to comply with its obligations under this Section in any respect, Association shall

pay to Developer liquidated damages in the amount of \$250,000.00 which Association and Developer agree are a fair and reasonable remedy.

8. Architectural Control by Association. Any alterations, additions and improvements to the Condominium Property shall comply with the following:

8.1. Alterations by Unit Owners Other than Developer. No Unit Owner other than Developer, provided Developer shall own at least one (1) Unit in the Condominium for sale in the ordinary course of business, shall, without first having obtained the written consent of the Board and all required governmental approvals and permits, make any alteration, replacement, decoration, enclosure, or addition in or to the Common Elements (including any Limited Common Element appurtenant to a Unit) or the Unit. Without limiting the generality of the foregoing, no Unit Owner other than Developer, provided Developer shall hold at least one (1) Unit in the Condominium for sale in the ordinary course of business, without having first obtained the prior consent of the Board, shall:

8.1.1. change, modify and remove, in whole or in part, replace, reroute, or otherwise affect any column, wall or partition, pipe, duct, wire or conduit, or obstruct any easement herein provided for; or

8.1.2. change, modify or otherwise affect in any manner any mechanical, Utilities, electrical, plumbing, Telecommunication Services, architectural or structural system or element of the Building; or

8.1.3. remove, or change the style, pattern, material, texture or outside color of any door, window, fixture or equipment in or on an exterior of a Unit or Building wall; or

8.1.4. cover, from the inside or outside, the glass or other transparent or translucent material in any exterior door or window with, or apply or affix thereto, any material or substance which shall render the same opaque or change the exterior color thereof, except interior draperies, curtains, shades or shutters which are lined, backed, covered or painted on the side visible from the exterior with a neutral color material, any and all of which shall conform to building standards and Rules from time to time promulgated by the Board; or

8.1.5. affix to or cover any exterior door or window, or otherwise install on the exterior of any Unit or the Building, any storm or hurricane shutter which has not been approved by Association or any awning or any protective or decorative panel, paneling, trim, enclosure, fixture, or appliance; or

8.1.6. change, modify or otherwise affect in any manner the impact resistant glass windows and sliding glass doors; or

8.1.7. otherwise change, modify or alter the exterior of any Unit or the Building so that it thereby differs in appearance from any other Units of the same type.

8.2. Requests for Approval. All requests by Unit Owners for approval of alterations or additions shall be submitted to the Board in writing together with (a) two (2) copies of such plans and specifications as the Board shall require to evaluate the request, and (b) such reasonable fee as from time to time may be fixed by the Board to defray the expenses of reviewing such requests. The Board shall have a period of forty five (45) days after the date of its receipt of any such request within which to approve or disapprove the same, and if not approved within such forty-five (45) day period, such request shall be deemed disapproved. Any Unit Owner making an addition, alteration, or improvement shall be deemed to have agreed to indemnify and hold Association and all other Unit Owners harmless from all damages and liability which results from such addition, alteration or improvement.

8.3. Alterations by Association. Whenever, in the judgment of the Board, the Common Elements or any part thereof shall require capital additions, alterations or improvements (as distinguished from repairs and

replacements) costing in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate in any calendar year, 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 Voting Interests 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 of Fifty Thousand Dollars (\$50,000.00) or less in a calendar year may be made by 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. The dollar cap provided in this Section shall be adjusted annually to take into account changes in the cost of living as reflected in any nationally available Consumer Price Index selected by the Board.

8.4. Alterations by Developer. As long as Developer is offering at least one (1) Unit in the Condominium for sale in the ordinary course of business, Developer shall have the right, without the vote or consent of Association to:

8.4.1. Make structural and non-structural changes, alterations, additions, or improvements in and to the Units owned by Developer and to change the interior design and arrangement of Developer-owned Units; and

8.4.2. Change the size and/or number of Developer owned Units by combining all or part of two (2) or more Developer owned Units or by subdividing one (1) or more Developer owned Units (including any Units resulting from the prior combination of two (2) or more of Developer owned Units) or otherwise, and to reapportion among the affected Developer-owned Units their appurtenant undivided interest in the Common Elements, all only to the extent permitted by and according to the procedures provided in the Act. Any change in the number or size of Developer-owned Units and any reapportionment of that appurtenant undivided interest in the Common Elements shall be reflected by an amendment to this Declaration which shall contain a survey reflecting the change.

9. Operation of the Condominium by Association; Power and Duties; Limitation Upon Liability of Association. Association shall be the entity responsible for the operation of the Condominium. The powers and duties of Association shall include those set forth in the Articles and By-Laws. Notwithstanding the duty of Association to maintain and repair parts of the Condominium Property, Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair caused by any condition of the Condominium Property.

10. Assessments. Association has been granted the right to make, levy and collect Assessments against the Unit Owners to provide the funds necessary for the proper operation and management of the Condominium. The following provisions shall govern the making, levying and collecting of such Assessments for Common Expenses, and the payment of the costs and expenses of operating and managing the Condominium by Association.

10.1. Determination of Assessments. The Board 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. Each Unit Owner shall be liable for his or her share of all Common Expenses which shall be in the same percentage as his or her ownership of the Common Elements.

10.2. Association as Unit Owner. Should Association become the Unit Owner of a Unit, the Assessment which would otherwise be due and payable to Association by the Unit Owner of such Unit, reduced by the amount of income which may be derived from the leasing of such Unit by Association, shall be apportioned and the Assessment therefor levied ratably among the Owners of all Units which are not owned by Association, based upon their proportionate interests in the Common Elements exclusive of the interests therein appurtenant to the Unit owned by Association.

10.3. Time for Payment. The Assessment for Common Expenses levied against each Unit Owner shall be payable in monthly installments or at such time as shall from time to time be fixed by the Board. The Unit Owner is responsible for the payment of Assessments as of the date that such Unit Owner closes on the purchase of the Condominium Parcel.

10.4. Annual Budget. The Board shall, in accordance with the By-Laws of Association, establish an annual budget in advance for each fiscal year, which shall correspond to the calendar year, which shall estimate all expenses for the forthcoming year required for the proper operation, management and maintenance of the Condominium and all property owned by Association, if not an expense of another association, including, to the extent required by law and, in addition, when deemed necessary or advisable by the Board, a reasonable allowance for contingencies and reserves, and shall estimate all income to be collected during the year. Upon adoption of each annual budget by the Board, copies thereof shall be delivered to each Unit Owner, and the Assessment for the year shall be based upon such budget; provided, however, that failure to deliver a copy of the budget to a Unit Owner shall not affect the liability of such Unit Owner for the Assessments. Should the Board at any time and from time to time determine, in the sole discretion of the Board, that the Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board shall have the authority to levy such additional Assessment or Assessments as it shall deem necessary. 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. Additionally, the charges for Telecommunication Services, if any, to be provided to all of the Units of the Condominium, shall be deemed to be a Common Expense. The Board in determining the amount of the Assessments payable by the Unit Owners shall be authorized to include such charges in the estimated operating budget for the Condominium. Accordingly, the provisions contained in Section 11 of this Declaration with respect to the collection of Assessments shall be applicable to the charges for Telecommunication Services.

10.5. Reserve Funds. The Board, in establishing each annual budget, shall include therein sums to be collected and maintained as reserve funds for the repair and replacement of Common Elements and personal property held for the joint use and benefit of the Owners of all Units as required by the Act. Developer may vote to waive reserves or reduce the funding of reserves in accordance with the rights and obligations set forth in the Act.

10.6. Initial Capital Contribution. The Developer will collect at Closing from each Unit Owner and deposit with the Association, an amount equal to two (2) months of Condominium Association Assessments which shall be an Initial Capital Contribution.

10.7. Special Assessments. The specific purpose or purposes of any Special Assessment approved in accordance with this Declaration, Articles, or By-Laws shall be set forth in a written notice of such Special Assessment sent or delivered to each Unit Owner. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice, or returned to the Unit Owners. However, upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus. Capital expenditures, other than for repair or replacement, which exceed twenty (20%) percent of the annual budget, must be approved by a majority of the entire voting interests of the Association.

10.8. Use Fees. The Board has the right, but not an obligation, to establish use fees ("Use Fees") from time to time for the exclusive use of any portion of the Common Elements. Alternatively, the Board may elect not to charge Use Fees and include the costs of all or any of the foregoing in Common Expenses, which will then be shared by all Unit Owners in accordance with their percentage interest in the Common Elements.

## 11. Collection of Assessments.

11.1. Delinquency or Default. The payment of any charges or Assessment or installment thereof due to Association shall be in default if not paid to Association on or before the date due. When in default, the delinquent charges, Assessments or installments thereof shall bear interest at the highest rate permissible by law until the same, and all interest due thereon, have been paid in full.

11.2. Personal Liability of Unit Owner. The Owner(s) of each Unit shall be personally liable, jointly and severally, as the case may be, to Association for the payment of all charges for Assessments for Common

Expenses, regular or special, interest on such delinquent charges, Assessments or installments thereof as above provided, and for all costs of collecting the charges, Assessments and interest thereon, including reasonable attorneys' fees, paraprofessionals' fees and costs (pre-trial and at the trial and appellate levels), whether suit be brought or not, levied or otherwise coming due while such person(s) or entity own(s) a Unit.

11.3. Liability not Subject to Waiver. No Unit Owner may exempt himself from liability for any Assessment or charge levied against such Unit Owner and his or her Unit by waiver of the use or enjoyment of any of the Common Elements, Limited Common Elements, or property owned by Association, or by abandonment of the Unit, or in any other manner.

11.4. Lien for Assessment. Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon any Limited Common Elements appurtenant to any such Unit, which lien shall and does secure the monies due for all: (1) Assessments levied against the Unit and the Unit Owner(s), thereof, and (2) interest, if any, which may become due on delinquent Assessments or charges owing to Association, and (3) reasonable costs and expenses, including actual attorneys' fees, paraprofessionals' fees and costs (pre-trial and at the trial and appellate levels) which may be incurred by Association in enforcing its lien upon the Unit and its appurtenances. The lien granted to Association may be established and foreclosed in the Circuit Court in and for County, and in any suit for the foreclosure of such lien, Association shall be entitled to seek an order of court that it is entitled to (i) collect rent from the Unit Owner if the Unit Owner remains in possession of the Unit after a judgment of foreclosure is entered and (ii) obtain the appointment of a receiver for such Unit to collect the rent if the Unit is leased or rented during the pendency of the foreclosure action. The lien of Association shall also secure all advances for taxes, and payments on account of superior mortgages, liens or encumbrances made by Association to preserve and protect its lien, together with interest at the highest rate permitted by law on all such advances made for such purpose, and the priority of the lien shall relate back to the date upon which this Declaration was recorded, except as otherwise provided in the Act. No foreclosure judgment may be entered against a Unit Owner until at least thirty (30) days after Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments and/or charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments and/or charges, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, Association may not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry 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, paraprofessional fees and costs as permitted by law. The notice requirements of this Section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

11.5. Recording and Priority of Lien. The lien of Association shall be effective from and after recording in the Public Records of County a claim of lien stating the name and address of Association, the description of the Unit encumbered thereby, the name of the record Unit Owner, the amount and the date when due, and shall continue for one (1) year unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction, in which case the lien shall continue until such action is brought to completion. Such claims of lien shall include Assessments and charges which are due and which accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, plus interest, costs, attorney's fees, paraprofessional fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien of Association shall be subordinate to the lien of any mortgage or any other lien recorded prior to the time of recording Association's claim of lien except that the lien of Association for tax or Special Assessment advances made by Association where any taxing authority having jurisdiction levies any tax or Special Assessment against the Condominium as an entirety instead of levying the same against each Unit and its appurtenant undivided interests in Common Elements, shall be prior in lien, right and dignity to the lien of all mortgages, liens and encumbrances, whether or not recorded prior to Association's claim of lien therefor, and Association's claim of lien for collection of such portion of any tax or Special Assessment shall specifically designate that the same secures an Assessment levied pursuant to this Declaration.

11.6. Effect of Foreclosure or Judicial Sale. Subject to the provisions of Section 11.9 hereof, a Unit Owner, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of

foreclosure, is liable for all Assessments which come due while he or she is the Unit Owner, and is also jointly and severally liable with the previous Unit Owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the current Unit Owner may have to recover from the previous Unit Owner the amounts paid by the current Unit Owner.

11.7. Effect of Voluntary Transfer. When a Unit Owner proposes to lease, sell or mortgage the Condominium Parcel in compliance with other provisions of this Declaration, Association, upon written request of Unit Owner, shall furnish to the proposed purchaser or mortgagee, a statement verifying the status of payment of any Assessment or charge which shall be due and payable to Association by the Unit Owner. Such statement shall be executed by any officer of Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged at the time when payment of any Assessment or charge against the Unit Owner and the Unit which is due to Association shall be in default (as long as a claim of lien has been recorded by Association) then the proceeds of such sale or mortgage proceeds, as the case may be, shall be applied by the purchaser or mortgagee first to payment of any then delinquent Assessment or charge or installment thereof due to Association before payment of the balance of such proceeds of sale or mortgage to the Unit Owner responsible for payment of such delinquent Assessment. With any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and charges against the grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

11.8. No Election of Remedies. Institution of a suit at law to attempt to effect collection of the payment of any delinquent Assessment or charge shall not be deemed to be an election by Association which shall prevent it from thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

11.9. Institutional First Mortgagee.

11.9.1. The liability of an Institutional First Mortgagee or its successor or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of: (i) the Unit's unpaid regular periodic Assessments for Common Expenses which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not yet been received by Association; or (ii) one percent (1%) of the original mortgage debt. The provisions of this Section shall not apply unless the Institutional First Mortgagee joins Association as a defendant in the foreclosure action. Joinder of Association is not required if, on the date the complaint is filed, Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the first mortgagee.

11.9.2. The Institutional First Mortgagee or its successor or assignees acquiring title shall pay the amount owed to Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle Association to record a claim of lien against the Unit and proceed in the same manner as provided in this Section for the collection of unpaid Assessments.

11.9.3. The provisions of this subsection shall not be available to shield an Institutional First Mortgagee from liability for Assessments in any case where the unpaid Assessments sought to be recovered by Association are secured by a lien recorded prior to the recording of the mortgage.

11.9.4. In the event of the acquisition of title to a Unit by foreclosure or judicial sale or by deed in lieu of foreclosure, any Assessment(s) or charge(s) as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Unit Owners as a part of the Common Expenses, although nothing herein contained shall be construed as releasing the party personally liable for such delinquent Assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

**11.10. Statutory Assessment Guarantee; Liability of Developer for Common Expenses.**

11.10.1. The Developer guarantees that from the recording of this Declaration, until December 31, 2007, or such earlier date as unit owners other than the Developer first elect a majority of the Directors of the Condominium Association (the "turnover date"), assessments against unit owners for common expenses will not exceed \$623.46 per quarter. If the turnover date has not occurred by December 31, 2007, then the Developer further guarantees that from January 1, 2008, until the first to occur of the turnover date or December 31, 2008, assessments against unit owners for common expenses will not exceed \$716.98 per quarter. If the turnover date has not occurred by December 31, 2008, the Developer further guarantees that from January 1, 2009, until the turnover date, assessments against unit owners for common expenses will not exceed \$824.53 per quarter. During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

11.10.2. No funds receivable from Unit purchasers or Unit Owners payable to Association or collected by Developer on behalf of Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the estimated operating budget for the first twelve (12) months of operation contained in the Offering Circular (Prospectus) delivered to Unit purchasers or Unit Owners when Unit purchasers or Unit Owners contracted to purchase a Unit, if applicable, shall be used for payment of Common Expenses during the guarantee period. This restriction shall apply to funds including, but not limited to, capital contributions, reimbursements for utility deposits or start-up funds collected from Unit purchasers at closing. If an audit of the Association's financial records performed for the period which includes the Guarantee Expiration Date (including any extensions thereof), reveals that Developer has funded a greater amount than required under this Section, then any such excess shall be promptly refunded to the Developer by Association.

11.11. Possession of Unit. Subject to Association's rights under this Declaration and under law, any person who acquires an interest in a Unit, except Institutional First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including, without limitation, persons acquiring title by operation of law, shall be entitled to occupancy of the Unit and enjoyment of the Common Elements in accordance with the purposes for which they are intended, provided that such occupancy and enjoyment do not hinder or encroach upon the lawful rights of other Unit Owners.

11.12. Certificate of Unpaid Assessments. Association shall provide a certificate stating all Assessments, Special Assessments and other moneys owed to Association by the Unit Owner with respect to the Condominium Parcel, within fifteen (15) days after request by a Unit Owner or Institutional First Mortgagee.

12. Insurance. Insurance covering portions of the Condominium Property shall be governed by the following provisions:

12.1. Insurance Trustee. At any time the Board shall have the option to appoint a bank or trust company in Florida with trust powers to act as its insurance trustee ("Insurance Trustee") hereunder. Insurance Trustee and Association shall enter into a written agreement outlining the duties and obligations of Insurance Trustee and Association with respect to the requirements of this Declaration. Insurance Trustee (if appointed) shall not be liable for payment of insurance premiums, nor for the renewal or the sufficiency of insurance policies nor for the failure to collect any insurance proceeds. If Association does not appoint an Insurance Trustee, Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. The sole duty of Insurance Trustee shall be to receive such proceeds of property insurance as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of Association, Unit Owners and their respective mortgagees, to be disbursed as herein provided. Association shall pay a reasonable fee to Insurance Trustee for services rendered hereunder and shall pay such costs and expenses as Insurance Trustee may incur in the performance of its duties hereunder; such fees and costs to be assessed against and collected from Unit Owners as a Common Expense.



Insurance Trustee shall be liable only for its willful misconduct or gross negligence, and then only for such money as may come into the possession of Insurance Trustee.

12.2. Named Insured. The named insured shall be Association, individually, and as agent for Unit Owners covered by the policy, without naming them and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be additional insureds. Named as an insured may also be Association's authorized representative, on behalf of Association, including Insurance Trustee or any successor to Insurance Trustee.

12.2.1. Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to Insurance Trustee (if appointed), or to Association (if no Insurance Trustee is appointed), and all policies and endorsements thereto shall be deposited with Insurance Trustee (if appointed) or otherwise with Association.

12.2.2. Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy.

12.3. Coverage. Association shall use its best efforts to obtain and maintain adequate insurance issued by insurance carriers generally acceptable to FNMA or FHLMC (see FNMA Conventional Home Mortgage Seller's Contract Supplement and the FHLMC Seller's Guide) covering the following:

12.3.1. Property Insurance. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units initially installed, or replacements thereof, of like kind or quality in accordance with the original plans and specifications therefor, or as it existed at the time the Unit was initially conveyed if the original plans and specifications are not available, but excluding floor coverings, wall coverings and ceiling coverings, all furniture, furnishings, electrical fixtures, appliances, air-conditioning or heating equipment, water heaters, built-in cabinets 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 service machinery contained therein (collectively, the "Insured Property"), shall be insured, in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs so that there will be no co-insurance applicable. The insurance policy shall provide a replacement cost valuation. Such policies may contain deductible provisions as determined by the Board (and approved by Developer so long as Developer holds a Unit in the Condominium for sale in the ordinary course of business). Such coverage shall afford protection against loss or damage by fire and other hazards covered on an all-risk basis.

12.3.2. 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, but with combined single limit liability of not less than \$2,000,000 for each occurrence. The limits required herein can be satisfied by using an umbrella liability policy. Each policy shall have a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.

12.3.3. Workers' Compensation Insurance. Workers' compensation including employer's liability in an amount determined by the Board and other mandatory insurance, when applicable.

12.3.4. Flood Insurance. Flood insurance purchased through the National Flood Insurance Program in an amount not less than:

- (a) the maximum coverage available for all buildings and other insurable property within the Condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or

- (b) one hundred (100%) percent of current replacement of all such buildings and other insurable property within such area.

12.3.5. Fidelity Insurance. Fidelity insurance, if required under the provisions of the Act, covering all Directors, officers and employees of Association and managing agents who handle Association funds, if any.

12.3.6. Directors and Officers Insurance. Directors and officers insurance, if desired and/or required under the provisions of the Act, covering all Directors, officers and employees of Association, for claims arising out of their alleged "wrongful acts."

12.3.7. Windstorm Coverage. Windstorm coverage in an amount consistent with Section 12.3.1.

12.3.8. Other Insurance. Such other insurance as the Board shall determine from time to time to be desirable.

12.3.9. Waiver of Subrogation. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right of subrogation against Association and against the Unit Owners individually and as a group.

12.4. Premiums. Premiums upon insurance policies purchased by Association shall be paid by Association as a Common Expense. Premiums may be financed in such manner as the Board deems appropriate.

12.5. Proceeds. 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.

12.6. 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.

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

12.7.1. Expenses of the Trust. All expenses of Insurance Trustee (if appointed) shall be first paid or provisions shall be made therefor.

12.7.2. 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. Regardless of any delay in disbursement, only Unit Owners holding title at the time of any disbursement of insurance proceeds shall have any rights to the same.

12.7.3. Failure to Reconstruct or Repair. If elsewhere it is determined in the manner 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 12.7.2 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. This is a covenant for the benefit of any Institutional First Mortgagee of a Unit and may be enforced by them.

12.7.4. Certificate. In making the distributions to Unit Owners and their mortgagees, Insurance Trustee (if appointed) may rely upon a certificate of Association made by its President or Vice President or Association's attorney as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution. Insurance Trustee (if appointed) may rely upon a certificate of Association made by its President or Vice-President or Association's attorney to determine whether or not the damaged property is to be reconstructed or repaired.

12.8. Association as Agent. 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 purchase and maintain insurance policies, adjust all claims arising under insurance policies purchased by Association, collect and appropriately distribute the proceeds of insurance policies, execute and deliver releases upon the payment of claims and execute any document necessary for the performance of any of the insurance provisions of the Condominium Documents. Association may designate Insurance Trustee to act as the attorney-in-fact.

12.9. Unit Owners Personal Coverage. Unit Owners should obtain insurance coverage at their own expense upon the property lying within the boundaries of their Unit, parking space(s) and storage space(s), if applicable, including, but not limited to, their personal property, all floor, wall and ceiling coverings, electrical fixtures, appliances, air conditioning and heating equipment, air conditioner air handling equipment, water heaters and built-in cabinets. Unit Owners should also obtain personal liability and living expense insurance. Insurance policies issued to individual Unit Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against Association. Unless Association elects otherwise, the insurance purchased by Association shall not cover claims against a Unit Owner due to accidents occurring within his or her Unit, parking space(s) or storage space(s), if any, nor casualty or theft loss to the contents of such Unit, parking space(s) or storage space(s), if any. It shall be the obligation of the individual Unit Owner, if such Unit Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by Association.

### 13. Reconstruction or Repair After Fire, Acts of Terrorism or Other Casualty.

13.1. Determination to Reconstruct or Repair. In the event of damage to or destruction of the Insured Property, the Board shall arrange for the prompt repair and restoration of the Insured Property; provided, however if seventy-five percent (75%) or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning eighty percent (80%) of the applicable interests in the Common Elements vote not to proceed with the repair or restoration thereof, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by 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 Association; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his or her share of such funds all mortgages and liens on his or her Unit in the order or priority of such mortgages and liens.

13.2. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements; or if not, then in accordance with the plans and specifications approved by the Board, and if the damaged property which is to be altered is a Building, by a majority of Unit Owners of that Building. Notwithstanding the foregoing, each mortgagee of a Unit which will be altered shall have the right to approve the plans for the alteration, which approval shall not be unreasonably withheld.

13.3. Unit Owner Responsibility. If there is damage to those parts of the Condominium for which the responsibility of maintenance and repair is that of the Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair. In all other instances, the responsibility for all necessary reconstruction and repair shall be that of Association.

13.4. Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which Association has the responsibility of reconstruction and repair, Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

13.5. Special Assessments and Additional Charges. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by 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, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Insured Property shall be in proportion to all of the Unit Owners' respective shares in the Common Elements.

13.6. Disbursement of Construction Funds. 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:

13.6.1. Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of Association is less than One Hundred Thousand Dollars (\$100,000), then the construction fund shall be disbursed in payment of such costs upon the order of the Board; provided, however, that upon request to Association by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage as set forth in Section 13.6.2 below.

13.6.2. Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of Association is equal to or more than One Hundred Thousand Dollars (\$100,000), then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Section 13.6.1 above, but then only upon the further approval of an architect qualified to practice in Florida and employed by Association to supervise the work.

13.6.3. Surplus. It shall be presumed that the first moneys disbursed in payment of cost 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 a Unit Owner which is not in excess of Assessments paid by such Unit Owner into the construction fund shall not be made payable to any mortgagee.

13.6.4. Certificate. Notwithstanding the provisions herein, Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Special Assessments shall be deposited by Association with Insurance Trustee (if appointed), nor to determine whether the disbursements from the construction fund are to be made upon the order of 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 Special Assessments paid by Unit Owners, nor to determine the payees nor the amounts to be paid. Insurance Trustee (if appointed) may rely upon a certificate of Association, made by its President or Vice President or Association's attorney, 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.

#### 14. Condemnation.

14.1. Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with Insurance Trustee (if appointed).

14.2. 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 shall also be deemed to be a casualty.

14.3. 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 Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 14 specifically provided.

14.4. Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of 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:

14.4.1. Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Unit Owner.

14.4.2. Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Unit Owner and to each mortgagee of the Unit, the remittance being made payable jointly to the Unit Owner and such mortgagees.

14.5. 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 of 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:

14.5.1. Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagee in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to Association for any due and unpaid Assessments and Special 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.

14.5.2. 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; 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.

14.5.3. 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 equally among the reduced number of Unit Owners (and among reduced Units).

14.5.4. Special Assessments. If the balance of the award (after payments to the Unit Owner and such Unit 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 Special Assessments against all of the Unit Owners who will continue as Unit Owners after the changes in the Condominium affected by the taking. The Special Assessments shall be made in proportion to the applicable percentage shares of those Unit Owners after all adjustments to such shares affected pursuant hereto by reason of the taking.

14.5.5. 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 Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Unit Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Unit Owners as they exist prior to the adjustments to such shares affected pursuant hereto by reason of the taking.

14.6. Taking of Common Elements. Awards for the taking of Common Elements or Limited Common Elements shall be used to render the remaining portion of the Common Elements or Limited Common Elements usable in the manner approved by the Board; provided that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Unit Owner and the mortgagees of the Unit.

14.7. Discretion of Board. In circumstances not covered by this Declaration or by law, a two-thirds (2/3) majority of the Board may, upon an opinion of counsel that its decision is reasonable, deal with the condemnation in such reasonable manner as it determines to be appropriate under the circumstances.

14.8. Amendment of Declaration. The changes in Units, in the Common Elements, in the Limited Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are affected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by and executed upon the direction of a majority of the Board.

15. 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:

15.1. Assumption of Risk. Without limiting any other provision in this Declaration, each person within any portion of the Common Elements accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Elements including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees, shrubbery, or other buildings (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Condominium, and (e) design of any portion of the Condominium. Each person also expressly indemnifies and agrees to hold harmless Developer, Association, and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or relating to the person's use of the Common Elements including, without limitation, attorneys' fees, paraprofessional fees and costs, pre-trial, at trial and upon appeal. Without limiting the foregoing, all persons using the Common Elements do so at their own risk. BY ACCEPTANCE OF A DEED, EACH UNIT OWNER ACKNOWLEDGES THAT THE COMMON ELEMENTS OR SURROUNDING AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. DEVELOPER AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING UNIT OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH UNIT OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

15.2. Awnings, Canopies and Shutters. No awning, canopy or shutter shall be attached or affixed to the exterior of a Unit unless such awning, canopy or shutter has been approved by the Board in writing. The Board has the absolute discretion to approve or disapprove any awning, canopy or shutters; provided, however, the Board must approve the installation or replacement of hurricane shutters conforming to the hurricane shutter specifications adopted by the Board.

- 15.3. Barbecue Grills. Barbecue grills are prohibited on any portion of the Condominium.
- 15.4. Bicycles. Bicycles may not be stored in the balconies, patios, terraces or in any place that causes the bicycle to be visible from the exterior of the Buildings. Bicycles are not permitted in the lobby, any corridor or hallway of the Condominium, if any.
- 15.5. Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes of which they are intended in the furnishing of services and facilities for the enjoyment of the Unit Owners.
- 15.6. Effect on Developer; Association. The restrictions and limitations set forth in this Section 15 shall not apply to Developer or to Units owned by Developer unless the Rules of the Act as it currently exists require otherwise. 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 15 for good cause shown.
- 15.7. Exterior Improvements; Landscaping. Without limiting the other provisions hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, or windows of the Building (including, but not limited to, awnings, signs, storm shutters, 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 Board; provided, however, a removable United States of America flag and removable official flags, not larger than four and one-half (4 1/2) feet by six (6) feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed as permitted by the Act. Prior to placing or affixing satellite dishes or antennas within a Unit or on the Limited Common Elements of the Unit, Unit Owner shall obtain Association's written approval. Due to the restrictions set forth in Section 15.14.4 relative to affixing satellite dishes or antennas, Association will in no way consent to satellite dishes or antennas being affixed in a way that penetrates the post tension concrete slab system.
- 15.8. Lawful Use. No immoral, improper, offensive 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 thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be the same as is elsewhere herein specified.
- 15.9. Leases. No portion of a Unit (other than an entire Unit) may be rented. All leases shall be on forms approved by Association and shall provide (or, if it does not provide, shall be automatically deemed to provide) that (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any rules and regulations adopted by the Association from time to time (before or after the execution of the lease) and (ii) 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 and By-Laws of Association, applicable Rules or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by Association. Unit Owners are responsible for providing to their tenants copies of all such documents or instruments. Each lease must be for a minimum period of one (1) month or thirty (30) days, whichever is less. No subleasing or assignment of lease rights by the tenant is permitted. Association may also charge a reasonable fee to offset the costs of a background check on tenant. As a condition to the approval by Association of a proposed lease of a Unit, Association has the authority to require that a security deposit in an amount not to exceed the equivalent of one (1) month's rent (or such greater amount permitted from time to time by the Act) be deposited into an account maintained by Association as permitted by the Act. The security deposit shall protect against damages to the Common Elements or Association Property. A security deposit held by Association under this Section 15.9 shall be governed by Chapter 83 of the Florida Statutes, as it may be renumbered from time to time. The Unit Owner will be jointly and severally liable with the tenant to Association for any amount in excess of such sum which is required by Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant.
- 15.10. Litter. No article of personal property shall be hung or shaken from the doors or windows of any Unit. No Unit Owner shall sweep or throw from his Unit any dirt or any other materials. No garbage, trash, refuse

or rubbish shall be deposited, dumped, or kept on any part of the Common Elements except closed containers deposited in chutes or placed for pick-up in accordance with Rules promulgated by the Board.

15.11. Nuisances. No nuisances shall be allowed upon the Condominium Property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Condominium Property by residents. No use shall be made of any Unit or of the Common Elements or Limited Common Elements which will increase the rate of insurance upon the Condominium Property.

15.12. Parking.

15.12.1. Exterior Parking is solely for non-commercial automobiles with a current passenger registration. No vehicle which cannot operate on its own power shall be permitted to remain on the Condominium Property for more than forty-eight (48) hours. No Unit Owner may park any vehicle in guest parking spaces.

15.12.2. No commercial vehicles, campers, mobile homes, motor homes, house trailers, or trailers of every other description, boats or boat trailers or vans shall be permitted to be parked or to be stored at any place on the Condominium Property provided, however, the Board shall have the right to permit service vehicles or vans to be parked for specified periods of time in designated service parking areas to the extent that some exists. The term commercial vehicle shall not be deemed to include recreational or utility vehicles (i.e. Broncos™, Blazers™, Explorers™, etc.) no longer than 19' or clean "non-working" vehicles such as pick-up trucks and vans not in excess of 3/4 ton or cars, if they are used by the Unit Owner on a daily basis for normal transportation. The term commercial vehicle shall also not be deemed to include law enforcement vehicles. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction or maintenance vehicles in connection with the construction, improvement, installation, or repair by Developer of any part of the Condominium Property. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other temporary commercial services. In addition, this parking prohibition shall not apply to Developer's vehicles when engaged in any activity relating to construction, maintenance or marketing of Units.

15.12.3. No vehicle maintenance or repairs shall be performed on the Condominium Property, except for emergency repairs.

15.13. Pets. Each Unit may house up to two (2) animals, in the aggregate, which may only be domestic cats and/or dogs, unless such animals are of a breed prohibited by County, City or any other ordinance. Association may prohibit other breeds of dogs that the Board considers dangerous in its sole discretion. Further, each Unit may house fish and/or two (2) domestic (household type) birds, as long as the fish and birds are kept indoors and do not become a source of annoyance to other Unit Owners. Pets shall not be allowed on or about the Common Elements except on a leash of no longer than six (6) feet or when being carried by their owner. No pets shall be left unattended in or on the balcony, patio or other similar area even if the area has been enclosed. No reptiles, wildlife, amphibians, poultry or livestock shall be raised, bred or kept on the Condominium Property. No pets or other animals shall cause or be the source of annoyance, nuisance or disturbance to any other owner or occupant. Each pet owner shall be responsible for the removal and disposal of the pet's feces or waste. The ability to have and keep an animal or pet is a privilege, not a right, and the Board is empowered to order and enforce the removal of any animal or pet which becomes a source of annoyance to other residents of the Condominium or in any way causes any damage to the property. Unit Owners may provide in a lease that tenants shall not be permitted to keep or have pets of any kind. The pet restrictions provided for herein apply to pets visiting a Unit and pets permanently housed in a Unit.

15.14. Post Tension Concrete Slab System. The Condominium may be constructed using a post tension concrete slab system. Nothing can be allowed to penetrate the slabs of the Buildings without the permission of the Board, which may be withheld for any reason.

15.14.1. This means that there can be no penetration into the top or underside of a slab. By way of example, the Units are not designed to allow the installation of a ceiling fan, soffits or



lighting in the ceiling unless the same are part of the original construction. No penetration into the surface is permitted in structural walls, columns and floors. Each Unit Owner indemnifies and holds harmless Association and every other Unit Owner from any and all damages, liabilities and costs including, without limitation, attorneys' and paraprofessional fees and costs (pre-trial and at all levels including trial and appellate levels), resulting from such Unit Owner's improper penetration of any slab within the Condominium.

15.14.2. Trellis work and lattice work are not permitted if penetration that will in any way affect the post tension concrete slab system is required.

15.14.3. The installation of hurricane shutters may be restricted. There may be restrictions as to the types of installation permitted and the method of fastening the hurricane shutters to the Buildings.

15.14.4. Satellite dishes and antennas shall not be affixed in a way that penetrates the post tension concrete slab system.

15.15. Rules and Regulations. Reasonable Rules concerning the use of the Condominium Property may be made and amended from time to time by a majority vote of the Board. Copies of such Rules and amendments thereto shall be furnished by Association to all Unit Owners and residents of the Condominium upon request.

15.16. Signs. No signs, advertisement, notice, lettering or descriptive design of any kind shall be displayed or placed upon any part of the Condominium Property except in a place, style and manner approved by the Board in its sole discretion.

15.17. Units. Each Unit shall be used as a residence only, except as otherwise herein expressly provided and no commercial occupation or activity may be carried on in any Unit except as such occupation or activity is permitted to be carried on by Developer under this Declaration. Notwithstanding the foregoing, a Unit may contain a home office so long as no business invitees visit the Unit and the home business activities do not pose a nuisance to other Unit Owners and residents. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, in addition to such persons' families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner of or employee of such partnership, (iv) the fiduciary or beneficiary of such trust or other 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, in addition to such person's families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, (iii) a partner or employee 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. "**Families**" or words of similar import used herein shall be deemed to include spouse, parents, parents-in-law, brothers, sisters, children, grandchildren, unmarried couples and housekeepers. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above.

15.18. Utility Addition. No additional utility fixture or improvement including, without limitation, any water, sewage, electrical, air conditioning or heating system, line, duct, conduit, pipe, or wire shall be added to service any Unit without the prior written consent thereto by the Board.

15.19. Weight and Sound Restrictions.

15.19.1. Unless installed by Developer or otherwise first approved by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers and bathrooms. Installation of hard surfaced floor coverings (other than by Developer) in any other areas must have sound absorbent padding approved by the Board, or a less dense floor covering, such as carpeting, must be used in such areas. Use of a hard and/or heavy surface floor covering in a location other than the foyer or the bathrooms must be submitted to and approved by the

Board and also meet applicable structural requirements. The restrictions on installation of hard surfaced floor coverings do not apply to the Units located on the ground floor.

15.19.2. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building.

15.19.3. The installation of a waterbed is strictly prohibited.

15.19.4. The Board may require a structural engineer to review certain of the proposed improvements, with such review to be at the Unit Owner's sole expense. The Board will have the right to specify the exact material to be used on balconies and patios. Any use guidelines set forth by Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Unit Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and Association has the right to require immediate removal of violations. Applicable warranties of Developer, if any, shall be voided by violations of these restrictions and requirements.

15.19.5. Each Unit Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. By way of example, certain fans in the Condominium may run continuously, causing noise and vibration. Noise from stairwells and elevator operation is normal for this type of building. Flushing toilets, generators, high heels walking on tiles or marble, alarms, pumps and intermittent fans all make noise and vibrations which will be noticeable to some Unit Owners. These sounds are normal, and to be expected. Volumes and pitches may vary, and are not guaranteed. Developer does not make any representation or warranty as to the level of sound transmission between and among Units and other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases Developer from any such warranty and claim for loss or damages resulting from sound transmission.

15.20. Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Unit shall be of a type and color as approved in writing by the Board. The Association will specify the type and color of all hurricane shutters. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season (nor at any other time). Any hurricane shutters may be installed or closed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise, and if not so opened or removed by a Unit Owner, such shutters may be opened or removed by the Association at the expense of such Unit Owner. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. Any approval of the Board shall not be deemed an endorsement of the effectiveness of hurricane shutters.

16. Compliance and Default. Each Unit Owner and every occupant of a Unit and Association shall be governed by and shall comply with the terms of this Declaration, all exhibits attached hereto, and the Rules. Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

16.1. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his or her negligence or by that of any member of his or her family or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected with respect to such negligence by Association.

16.2. 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 this Declaration, the Articles, the By-Laws, applicable Rules or any other agreement, document or instrument affecting the Condominium Property or administered by Association, in the manner required, Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to the extent permitted by, and in

accordance with, the Act, and to sue in a court of law for damages. In addition, Association shall have the irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements or Limited Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements or Limited Common Elements or to another Unit or Units.

16.3. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or Association to comply with the requirements of the Act, this Declaration, the exhibits attached hereto or the Rules, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees, paraprofessional fees and costs (pre-trial and at all levels, including trial and appellate levels) as may be awarded by the court.

16.4. No Waiver of Rights. The failure of Association or any Unit Owner to enforce any covenant, restriction or other provisions of the Act, this Declaration and the exhibits shall not constitute a waiver of their right to do so thereafter.

17. Termination of Condominium and/or Dissolution of Association. When the Board intends to terminate the Condominium, or dissolve Association, the Board shall so notify the Division before taking any action to terminate the Condominium or dissolve the Association. 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 fifty-one (51) percent of the Eligible Holders and of Unit Owners owning at least eighty percent (80%) of the applicable interests in the Common Elements (after twenty percent (20%) of the Units have been sold to Unit Owners other than Developer, Developer will not vote the Units owned by it for such withdrawal unless the Unit Owners of at least eighty percent (80%) of all other applicable interests in the Common Elements so elect for such withdrawal, at which time Developer may choose to vote either in favor of or against withdrawal from Condominium ownership, as it sees fit). 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 interest 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 or her share of such net proceeds all mortgages and liens of his or her Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of Association executed by its President and one other officer of Association, certifying as to the basis of the termination and such certificate shall be recorded among the Public Records of County. Within thirty (30) business days following the recordation of such certificate, Association shall (i) notify the Division of the termination and the date the certificate was recorded, the county where the certificate was recorded, and the book and page number of the public records where the certificate was recorded, and (ii) provide the Division with a copy of the recorded certificate certified by the clerk of County. Notwithstanding the foregoing, the Condominium cannot be terminated nor can the Association be dissolved without the consent of all Institutional First Mortgagees and Developer so long as Developer holds any Unit for sale in the ordinary course of business. Such prior consent of the Institutional First Mortgagees may not be unreasonably withheld.

18. Additional Rights of Institutional First Mortgagees. In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right, after providing adequate proof of their status and upon written request to Association, to:

18.1. Examine Association's books and records and require copies of the annual reports and other financial data;

18.2. Receive notice of Association's meetings and attend such meetings;

18.3. Receive notice of an alleged default by any Unit Owner, for whom such Institutional First Mortgagee holds a mortgage, which is not cured within sixty (60) days of notice of default to such Unit Owner;

18.4. Receive notice of any substantial damage or loss arising from a casualty or a condemnation to any portion of the Condominium Property;

18.5. Receive notice of any amendment to this Declaration affecting Unit boundaries or changes in Common Elements or terminating the Condominium; and

18.6. Receive notice of the lapse, cancellation or other material modification of any insurance policy maintained by Association.

18.7. Receive relief of any proposed termination of the Condominium regime.

18.8. By a majority vote, the Eligible Holders may require professional management.

18.9. By a majority vote, the Eligible Holders may require the Association to provide an audit of the Association's records.

19. Covenant Running With The Land. All provisions of this Declaration, the Articles, By-Laws and applicable Rules shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of 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, 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 by such Unit Owner, tenant or occupant.

20. Developer's and Association's Additional Rights.

20.1. Marketing Items. Developer, its agents, affiliates, or assignees, and any other person or entity designated by Developer, shall have the right to market Units and other property within the Neighborhood or Master Neighborhood in advertisements and other media by making reference to the Condominium, including, but not limited to, pictures or drawings of the Buildings and the Common Elements. All logos, trademarks, and designs used in connection with the Condominium are the property of Developer, and Association shall have no right to use the same after the Turnover Date (as such term is defined in the By-Laws) except with the express written permission of Developer.

20.2. Developer's Limited Right of Entry. Developer shall have the perpetual right to access and enter the Common Elements and Limited Common Elements at any time, even after the Turnover Date, for the purposes of inspection and testing of the Common Elements in connection with warranty claims under Section 718.203 of the Florida Statutes or otherwise. Association and each Unit Owner shall give Developer unfettered access, ingress and egress to the Common Elements and Limited Common Elements so that Developer and/or its agents can perform all tests and inspections deemed necessary by Developer in connection with warranty claims under Section 718.203 of the Florida Statutes or otherwise. Developer shall have the right to make all repairs and replacements deemed necessary by Developer in connection with warranty claims under Section 718.203 of the Florida Statutes or otherwise. At no time shall Association and/or a Unit Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Developer relative to any portion of the Common Elements and Limited Common Elements in connection with warranty claims under Section 718.203 of the Florida Statutes or otherwise.

20.3. Telecommunications Services.

20.3.1. Right to Contract for Telecommunications Services. The Association has the paramount right to enter into one or more contracts for the provision of a Telecommunications Service for the Condominium. Prior to the Turnover Date, all contracts between a Telecommunications Provider and Association shall be subject to the prior written approval of Developer.

20.3.2. Easements. Developer (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider that has entered into an agreement with Association respecting Telecommunications Services and/or Telecommunications Systems a perpetual right, privilege, easement and right-of-way across, over, under and upon the Condominium Property for the installation, construction and maintenance of Telecommunications Systems together with a perpetual right, privilege and easement of ingress and egress, access, over and upon the Condominium Property for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such Telecommunications Systems. If, and to the extent, Telecommunications Services provided by such Telecommunications Providers are to serve all of the Condominium Property, then the amounts payable to such Telecommunications Providers under their written agreements with Association shall be part of the Common Expenses of Association and shall be assessed as a part of the Assessments. Notwithstanding the foregoing, from and after the Turnover Date, such easements shall be cancelable by Association in accordance with the terms of the Act.

20.3.3. Restoration. Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Elements and/or any Unit to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to commence such restoration within twenty (20) days after receiving written notice from Association of such failure or the Telecommunications Provider's failure to complete such restoration within ninety (90) days of commencement shall vest in Association the right (but not the obligation) to restore or cause to be restored such portion of the Common Elements and/or any Unit disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Association may restore or cause to be restored such disturbed portion of the Common Elements and/or any Unit immediately. In the event that Association exercises the right of self-help, each Telecommunications Provider agrees in advance that Association shall have the sole right to (i) select the contractors to perform such work and (ii) determine the extent of required restoration. This remedy of self-help is in addition to all other remedies of Association hereunder. All reasonable expenses incurred by Association in connection with such restoration shall be paid by Telecommunications Provider within twenty (20) days of completion of restoration and delivery to Telecommunications Provider of Association's invoice therefor. Any expenses not so paid when due shall bear interest from the due date at the lesser of (i) the publicly announced prime rate (or similar successor reference rate) of Wachovia Bank N.A. on the date of such invoice, or (ii) the maximum rate of interest allowed by the law of the State of Florida for such obligations, or as provided in an agreement between Association and a Telecommunications Provider.

20.3.4. Developer's Rights. Each Unit Owner understands that the expense of any Telecommunications Service may not be charged on a bulk basis, but may be charged at the rate equal to any rate paid by individual owners that are not subject to a homeowners association or condominium association in County. Each Unit Owner acknowledges that Developer may receive lump sum or monthly compensation from any Telecommunications Provider in connection with the supply of Telecommunications Services. Such compensation may be paid on a per Unit or other basis. All such compensation shall be the sole property of Developer, who shall have no duty to account for or disclose the amount of such compensation.

#### 20.4. Monitoring System.

20.4.1. Right to Install. Association shall have the right, but not the obligation, to contract for the installation of a Monitoring System for each Unit within the Condominium and for the Condominium. Prior to the Turnover Date, all contracts for Monitoring Systems shall be subject to the prior written approval of Developer. In the event the Monitoring System is installed by a party other than Developer, each Unit Owner acknowledges that Developer may receive lump sum or monthly compensation from such party in connection with the costs of operating and maintaining the Monitoring System. Such compensation may be paid on a per Unit or other basis. All such compensation shall be the sole property of Developer. Developer or its nominees, successors, assigns, affiliates, and licensees may install such a Monitoring System. Developer reserves the right, at any time and in its sole discretion, to discontinue or terminate any Monitoring System prior to the Turnover Date. In addition, all Unit Owners specifically acknowledge that the Condominium may, but is not obligated to, have a perimeter access control system, such as fences, walls, hedges, or the like on certain perimeter areas. ASSOCIATION AND DEVELOPER SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE

BY REASON OF FAILURE TO PROVIDE ADEQUATE ACCESS CONTROL OR INEFFECTIVENESS OF ACCESS CONTROL MEASURES UNDERTAKEN.

20.4.2. Components. The Monitoring System, if installed, may include a central alarm system, wireless communication to Units, one or more manned gatehouses, one or more electronic gates, and roving attendants using vehicles, or any combination thereof. Association and Developer do not warrant or guaranty in any manner that the system will include these items, but reserve the right to install or provide the foregoing items, or any other items they deem appropriate in their sole and absolute discretion. After the Turnover Date, Association may expand the Monitoring System by a vote of the majority of the Board, without the joinder or consent of the Unit Owners or any third parties. Without limiting the foregoing, Developer and Association reserve the right to, at any time, increase, decrease, eliminate, or add other access monitoring measures as they deem appropriate in their sole and absolute discretion; provided, however, no changes shall be made prior to the Turnover Date without the prior written consent of Developer.

20.4.3. Part of Common Expenses. If furnished and installed within any Unit, the cost of operating and monitoring any Monitoring System may be included in the Common Expenses of Association and may be payable as a portion of the Assessments against Unit Owners. The purpose of the Monitoring System will be to control access to the Condominium. Each Unit Owner understands that the expense of the Monitoring System may not be charged on a bulk basis, but may be charged at the rate equal to any rate paid by individual owners in County that are not subject to a homeowners association or condominium association.

20.4.4. Unit Owner's Responsibility. All Unit Owners and occupants of any Unit, and the tenants, guests and invitees of any Owner, as applicable, acknowledge that Association, its Board and officers, Developer, their nominees or assigns, or any successor Developer, do not represent or warrant that (a) any Monitoring System, designated by or installed according to guidelines established, will not be compromised or circumvented, (b) any Monitoring System will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, and/or (c) the Monitoring System will in all cases provide the detection for which the system is designed or intended. In the event that Developer elects to provide a Monitoring System, Developer shall not be liable to the Unit Owners or Association with respect to such Monitoring System, and the Unit Owners and Association shall not make any claim against Developer for any loss that a Unit Owner or Association may incur by reason of break-ins, burglaries, acts of vandalism, personal injury or death, which are not detected or prevented by the Monitoring System. Each Unit Owner and Association is responsible for protecting and insuring themselves in connection with such acts or incidents. The provision of a Monitoring System (including any type of gatehouse) shall in no manner constitute a warranty or representation as to the provision of or level of security within the Condominium. Developer and Association do not guaranty or warrant, expressly or by implication, the merchantability of fitness for use of any Monitoring System, or that any such system (or any of its components or related services) will prevent intrusions, fires, or other occurrences, regardless of whether or not the Monitoring Service is designed to monitor the same. Each and every Unit Owner and the occupant of each Unit acknowledges that Developer and Association, their employees, agents, managers, directors, and officers, are not insurers of Unit Owners or Units, or the personal property located within the Units. Developer and Association will not be responsible or liable for losses, injuries, or deaths resulting from any such events.

21. Non-Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONDOMINIUM DOCUMENTS, ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LESSEES, LICENSEES, INVITEES, AGENTS, SERVANTS, CONTRACTORS, AND/OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

21.1. IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM AND THE VALUE THEREOF;

21.2. ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE STATE OF FLORIDA AND/OR COUNTY OR PREVENTS TORTIOUS ACTIVITIES; AND

21.3. THE PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY, AND WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO A UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE CONDOMINIUM (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION OR OTHERWISE. AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS). NOTHING IN THIS SECTION SHALL LIMIT THE RIGHT OF ANY UNIT OWNER TO SUE THE ASSOCIATION FOR ITS OWN NEGLIGENCE OR ITS WILLFUL ACTS OR OMISSIONS OR FOR ANY LIABILITY PROVIDED IN THE ACT ON THE DAY THIS DECLARATION IS RECORDED AMONG THE PUBLIC RECORDS OF COUNTY.

22. Resolution of Disputes. BY ACCEPTANCE OF A DEED, EACH OWNER AGREES THAT THE CONDOMINIUM DOCUMENTS ARE VERY COMPLEX; THEREFORE, ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO CONDOMINIUM DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHOULD FIRST BE SUBMITTED TO MEDIATION AND, IF NOT SETTLED BY MEDIATION, SHALL THEREAFTER BE SUBMITTED TO BINDING ARBITRATION AS PROVIDED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1 ET SEQ.) AND NOT BY A COURT OF LAW. DEVELOPER HEREBY SUGGESTS THAT EACH OWNER UNDERSTAND THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A UNIT. **THIS SECTION REQUIRES YOU TO WAIVE YOUR RIGHT TO SUE THE DEVELOPER IN COURT AND, INSTEAD, ARBITRATE OR MEDIATE DISPUTES INCLUDING, BUT NOT LIMITED TO: DEVELOPER REPRESENTATIONS PERTAINING TO COMMONLY USED FACILITIES; ACTIONS TAKEN BY DEVELOPER-ELECTED DIRECTORS WHILE THE DEVELOPER CONTROLS THE ASSOCIATION; DISPUTES REGARDING THE PURCHASER'S CLAIM OF VOIDABILITY BASED UPON CONTRACTUAL PROVISIONS AS REQUIRED IN SECTION 718.503(1)(A), FLORIDA STATUTES; FALSE OR MISLEADING STATEMENTS PUBLISHED BY THE DEVELOPER AND RELIED UPON BY THE PURCHASER; AND WARRANTY RIGHTS ON YOUR UNIT AND IMPROVEMENTS. THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, HAS CONTESTED THE ENFORCEABILITY OF THESE PROVISIONS. UNTIL THERE IS AN ADMINISTRATIVE RULE, LEGISLATIVE CHANGE OR OTHER DEFINITIVE RESOLUTION, YOU SHOULD CONSULT AN ATTORNEY ABOUT YOUR RIGHTS UNDER THESE PROVISIONS.**

23. Venue. EACH OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A UNIT, THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN COUNTY (AS DEFINED IN SECTION 1 OF THIS DECLARATION). DEVELOPER HAS AN OFFICE IN COUNTY AND EACH UNIT IS LOCATED IN COUNTY. ACCORDINGLY, AN IRREBUTTABLE PRESUMPTION EXISTS

THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN COUNTY. IN ADDITION TO THE FOREGOING, EACH UNIT OWNER AND DEVELOPER AGREES THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN COUNTY.

24. Reliance. BEFORE ACCEPTING A DEED TO A UNIT, EACH UNIT OWNER HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE PROVISIONS OF THIS DECLARATION. BY ACCEPTANCE OF A DEED TO A UNIT, EACH UNIT OWNER ACKNOWLEDGES THAT HE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DEVELOPER IS RELYING ON EACH UNIT OWNER CONFIRMING IN ADVANCE OF ACQUIRING A UNIT THAT THIS DECLARATION IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DEVELOPER. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH UNIT OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DEVELOPER TO SUBJECT THE CONDOMINIUM PROPERTY TO THIS DECLARATION, EACH UNIT OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DEVELOPER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH A UNIT OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF UNIT OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST DEVELOPER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS DECLARATION, OR THE EXHIBITS HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

25. Construction Activities. ALL OWNERS, OCCUPANTS AND USERS OF THE LAND ARE HEREBY PLACED ON NOTICE THAT (1) DEVELOPER AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES, AND/OR (2) ANY OTHER PARTIES MAY BE, FROM TIME TO TIME, CONDUCTING BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE LAND. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE LAND, EACH SUCH UNIT OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES, OR ANY NOISES RESULTING THEREFROM, SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE LAND WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DEVELOPER AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DEVELOPER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE LAND HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.

26. Notices. All notices to Association required or desired hereunder or under the By-Laws shall be sent by certified mail (return receipt requested) or by professional courier with receipt to Association at its office at the Condominium, or to such other address as 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 or her from time to time, in writing, to 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 Association. All notices are effective upon receipt or refusal to accept receipt.

27. Interpretation. The Board 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 counsel that any interpretation adopted by Association is not unreasonable shall conclusively establish the validity of such interpretation.
28. Mortgages. 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 Association.
29. Exhibits. All exhibits attached to this Declaration shall form a part of this Declaration as if set forth herein.
30. Blocked View; Trees and Shrubby. There is no guarantee that any Unit shall have any specific view. The (1) maturation of trees and shrubby, (2) construction of other condominiums, or (3) construction of any other improvement may partially or entirely block the view of each Unit. Additionally, Developer shall not be responsible for any reduction in privacy caused by the removal or pruning of trees and shrubby within the Condominium Property. Unit Owners shall not cut down trees and shrubby nor plant additional trees and shrubby within the Common Elements or Limited Common Elements.
31. 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, such dispute or litigation shall be governed by the laws of the State of Florida.
32. Construction Matters. All Units and their appurtenant Common Elements have been or will be sold without any Developer warranties whatsoever except as provided in the Act (to the extent such warranties are not effectively disclaimed and remain in effect, if at all). As to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s), Limited Common Elements, or the Common Elements including, without limitation, failure to build in accordance with any particular plans or specifications or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that (i) the party or parties bringing same shall have first given notice to Developer or other party against whom which relief or recovery is sought (the "Defendant") of the specific Construction Matters complained of and what actions are necessary to cure or correct same and (ii) the Defendant shall have been given at least one hundred twenty (120) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Construction Matter(s) and the time necessary to cure or correct same) in which to cure or correct the applicable Construction Matter(s) and shall have materially failed to do so. If any Construction Matter is not cured or corrected as aforesaid, all applicable parties shall be bound to submit the disputes or claims regarding the Construction Matters at issue solely to binding arbitration in accordance with the Florida Arbitration Code and the rules of the American Arbitration Association and the parties and their successors and assigns shall be bound by the results of such arbitration. Without limiting the general binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 32, as shall Association.
33. Eligibility Requirements for Board Membership. Any Director designated or appointed by Developer need not be a Unit Owner or a resident of a Unit. All other Directors must be Unit Owners. A person who has been convicted of a felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for membership on the Board.
34. Manager. Association may, but is not obligated to, retain a concierge and/or manager to assist the Board in connection with the operation of the Association. Without limiting any other provision hereof, Association may hire a concierge who will perform services for individual Unit Owners for which a Use Fee may or may not be charged.

35. Execution of Documents; Attorney-in-Fact. Wherever the signature of the President of Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of 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 Association in two separate capacities. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Unit Owner, by reason of the acceptance of a deed to such Unit Owner's Unit, hereby agrees to execute, at the request of Developer and its affiliates, any and all amendments to the existing documents and as they may be hereafter amended; and each such Unit Owner further appoints hereby and thereby Developer as such Unit Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Unit Owner, any and all of such documents or consents that may be required from time to time by the City, County or applicable governmental subdivisions or agencies where the Condominium is located. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of Developer.

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

37. 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.

38. 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, the Articles, By-Laws, and the Rules are fair and reasonable in all material respects.

39. 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.

40. 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.

41. Refund of Taxes, Fees and Other Charges. Unless otherwise provided herein, Association agrees that any taxes, fees or other charges paid by Developer to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to Developer in the event such refund is received by Association.

42. Title Documents. Each Unit Owner by acceptance of a deed to a Unit acknowledges that such Unit is subject to certain land use and title documents and all amendments thereto, which may include among other items, the documents recorded or to be recorded in the Public Records of County (collectively, the "**Title Documents**"). Developer's plan of development for the Condominium may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. **DEVELOPER RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS.** It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of Unit Owners other than Developer, Developer, by any one of its duly authorized officers, may, as the agent and/or the attorney-in-fact for the Unit Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Unit Owners, by virtue of their acceptance of deeds irrevocably nominate, constitute and appoint Developer, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such document executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Unit Owner agrees, by its acceptance of a deed to a Unit: (a) to execute or otherwise join in any documents required in connection with the amendment, modification, or

termination of the Title Documents; and (b) that such Unit Owner has waived its right to object to or comment on the form or substance of any amendment, modification, or termination of the Title Documents.

Without limiting the foregoing, upon the Turnover Date, Association shall assume all of the obligations of Developer under the Title Documents which affect the Condominium, this Declaration or by amendment to this Declaration recorded by Developer in the Public Records of County, from time to time, and in the sole and absolute discretion of Developer.

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NOT A  
CERTIFIED  
COPY

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 3rd day of December, 2007.

WITNESSES:

[Signature]  
 Print name: BARBARA J. FALLOFIELD  
[Signature]  
 Print name: Daniel J. Newman

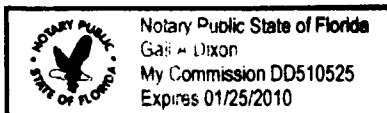
LENNAR HOMES, LLC, a Florida Limited Liability Company

By: [Signature]  
 Print Name: Russell Smith  
 Title: Vice President

{SEAL}

STATE OF FLORIDA )  
 ) SS.:  
 COUNTY OF Collier )

The foregoing instrument was acknowledged before me this 3rd day of December, 2007 by Russell B. Smith as Vice President of Lennar Homes, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or who produced \_\_\_\_\_ as identification.



Gail A. Dixon  
 NOTARY PUBLIC, State of Florida  
 Print name: GAIL A. DIXON

**Banks Engineering**Professional Engineers, Planners & Land Surveyors  
FORT MYERS ♦ NAPLES ♦ SARASOTA ♦ PORT CHARLOTTEDESCRIPTION OF A PARCEL OF LAND  
LYING IN  
SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST  
COLLIER COUNTY, FLORIDA  
**VISTA III AT HERITAGE BAY, A CONDOMINIUM**

A TRACT OR PARCEL OF LAND LYING IN SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AND BEING A PART OF TRACTS "E" AND "L-1" OF HERITAGE BAY COMMONS, A SUBDIVISION RECORDED IN PLAT BOOK 43 AT PAGES 46 THROUGH 54, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF SAID TRACT "E", SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF BELLAIRE BAY DRIVE-TRACT "R-1" OF SAID SUBDIVISION AND BEING ON A CURVE TO THE RIGHT HAVING A RADIUS OF 230.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N.58°55'48" E.; THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 31°05'48" FOR 124.83 FEET; THENCE S.00°01'36" W. ALONG SAID RIGHT-OF-WAY LINE FOR 202.70 FEET; THENCE S.89°59'48" E. FOR 66.04 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE S.89°59'48" E. FOR 105.81 FEET; THENCE S.00°00'00" E. FOR 69.77 FEET; THENCE S.45°06'43" E. FOR 36.57 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N.45°06'43" W.; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°07'26" FOR 15.75 FEET; THENCE S.00°14'09" E. FOR 166.40 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°38'41" FOR 18.03 FEET; THENCE S.51°52'50" E. FOR 67.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°07'10" FOR 19.96 FEET; THENCE N.90°00'00" E. FOR 144.50 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°40'18" FOR 25.32 FEET; THENCE N.80°19'43" E. FOR 146.59 FEET; THENCE S.09°40'17" E. FOR 108.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 518.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N.08°05'15" W.; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°24'38" FOR 12.75 FEET; THENCE S.09°29'53" E. FOR 18.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 500.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N.09°29'53" W.; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°04'03" FOR 79.13 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 124.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°33'56" FOR 40.18 FEET; THENCE N.90°00'00" W. FOR 188.49 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 224.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°02'58" FOR 352.05 FEET; THENCE N.00°02'58" E. FOR 240.90 FEET TO THE POINT OF BEGINNING.

THE DESCRIBED PARCEL CONTAINS 2.289 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTH LINE OF TRACT "E" OF HERITAGE BAY COMMONS AS PER THE PLAT RECORDED AT PLAT BOOK 43, PAGES 46 THROUGH 54, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

THE PARCEL IS SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

DESCRIPTION PREPARED 04-17-07.

*Thomas C. Shaw* 5-29-07  
THOMAS C. SHAW  
PROFESSIONAL SURVEYOR & MAPPER  
FLORIDA CERTIFICATION NO. 4672

**EXHIBIT "I"**

S:\Jobs\21xx\2167\SURVEYING\CONDO DOCS\DESCRIPTIONS\2167\_CONDO3.DOC  
S:\Jobs\21xx\2167\SURVEYING\CONDO DOCS\DESCRIPTIONS\2167\_CONDO3.DWG  
SHEET 1 OF 2

# SKETCH TO ACCOMPANY DESCRIPTION

OF A  
PARCEL OF LAND  
LYING IN  
SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST  
COLLIER COUNTY, FLORIDA

OR: 4322 PG: 3683

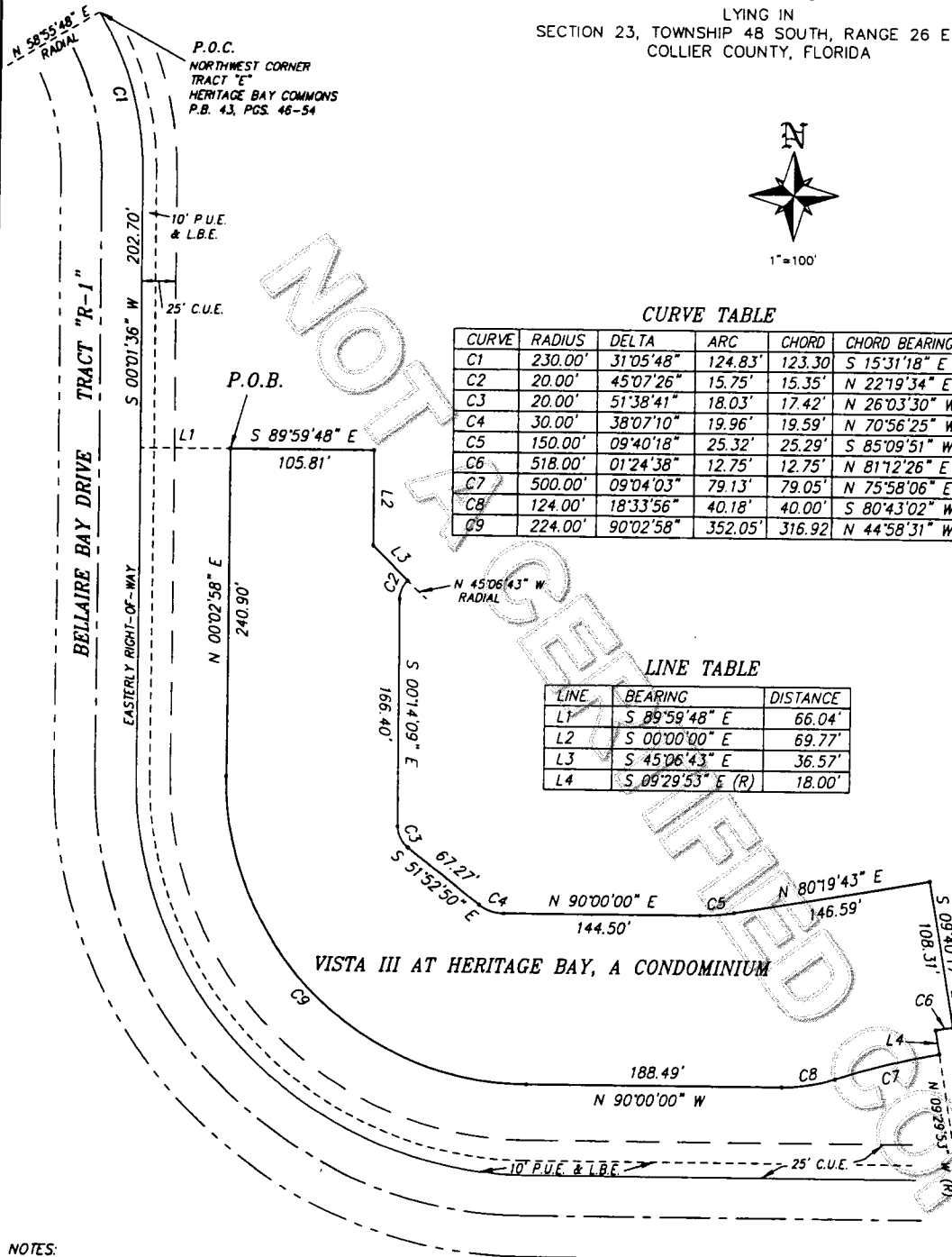


CURVE TABLE

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	230.00'	31°05'48"	124.83'	123.30'	S 15°31'18" E
C2	20.00'	45°07'26"	15.75'	15.35'	N 22°19'34" E
C3	20.00'	51°38'41"	18.03'	17.42'	N 26°03'30" W
C4	30.00'	38°07'10"	19.96'	19.59'	N 70°56'25" W
C5	150.00'	09°40'18"	25.32'	25.29'	S 85°09'51" W
C6	518.00'	01°24'38"	12.75'	12.75'	N 81°12'26" E
C7	500.00'	09°04'03"	79.13'	79.05'	N 75°58'06" E
C8	124.00'	18°33'56"	40.18'	40.00'	S 80°43'02" W
C9	224.00'	90°02'58"	352.05'	316.92'	N 44°58'31" W

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 89°59'48" E	66.04'
L2	S 00°00'00" E	69.77'
L3	S 45°06'43" E	36.57'
L4	S 09°29'53" E (R)	18.00'



NOTES:  
SEE SHEET 1 FOR COMPLETE LEGAL DESCRIPTION.

BEARINGS ARE BASED ON THE SOUTH LINE OF TRACT "E" OF HERITAGE BAY COMMONS AS BEARING N 90°00'00" E AS PER THE PLAT RECORDED IN PLAT BOOK 43 AT PAGES 46-54, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

\*\*\*THIS IS NOT A SURVEY\*\*\*

Thomas C. Shaw 5-29-07  
THOMAS C. SHAW  
PROFESSIONAL SURVEYOR & MAPPER  
FLORIDA CERTIFICATION NO. 4672

- THIS SKETCH IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER

- PREPARED APRIL 17, 2007

PREPARED BY:

**Banks Engineering**

ENGINEERING, SURVEYING & LAND PLANNING  
2515 NORTHBROOKE PLAZA DRIVE, SUITE 200  
NAPLES, FLORIDA 34110  
(239) 597-8061

FLORIDA SURVEYING BUSINESS CERTIFICATION NO. 6690

**EXHIBIT "2"**

SHEET 2 OF 2

LEGEND  
P.B. PLAT BOOK  
P.C. PAGES  
P.O.B. POINT OF BEGINNING  
P.O.T. POINT OF TERMINUS  
P.O.C. POINT OF COMMENCEMENT  
(R) INDICATES RADIAL LINE  
L1 LINE 1 OF LINE TABLE  
C1 CURVE 1 OF CURVE TABLE  
P.U.E. PUBLIC UTILITY EASEMENT  
L.B.E. LANDSCAPE BUFFER EASEMENT  
C.U.E. COLLIER COUNTY UTILITY EASEMENT  
P.C. POINT OF CURVATURE  
P.T. POINT OF TANGENCY  
P.R.C. POINT OF REVERSE CURVATURE



VISTA III AT HERITAGE BAY, A CONDOMINIUM

SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST  
LYING IN  
COLLIER COUNTY, FLORIDA

INSTRUMENT NO.

SHEET 2 OF 7

gbanks Engineering

ENGINEERING, SURVEYING & LAND PLANNING  
2015 NORTHMOORE PLAZA DRIVE, SUITE 200  
NAPLES, FLORIDA 34110  
(239) 587-2081

COORDINATE TABLE

No.	Northing	Easting
1	707088.86	430839.66
2	706700.17	432020.88
3	706237.26	432020.75
4	706527.26	43162.45
5	706527.39	430872.45
6	706558.57	430938.61
7	706768.35	431084.50
8	706428.59	43144.28
9	706455.35	431458.49
10	706309.71	431390.37
11	706527.45	430938.40
12	706749.10	431071.92
13	706749.05	431033.81
14	706619.38	431033.81
15	706619.44	430971.81
16	706587.61	430971.12
17	706588.90	431033.10
18	706486.97	430973.21
19	706486.26	431033.20
20	706410.90	431007.43
21	706459.67	431045.71
22	706397.53	43124.90
23	706348.75	431086.63
24	706336.59	43154.90
25	706398.59	431524.57
26	706339.59	431284.57
27	706339.06	431329.03
28	706401.08	431446.44
29	706422.87	431318.62
30	706361.75	431456.86

NOTE:  
SEE SHEET 1 OF 7 FOR CERTIFICATION,  
ADDITIONAL NOTES, AND LEGEND.

DESCRIPTION: VISTA III AT HERITAGE BAY, A CONDOMINIUM  
A TRACT OR PARCEL OF LAND LYING IN SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AND BEING A PART  
OF TRACTS "E" AND "F" OF HERITAGE BAY COMMONS, A SUBDIVISION RECORDED IN PLAT BOOK 43 AT PAGES 46 THROUGH 54,  
INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF SAID TRACT "E", SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE  
OF BELLAIR BAY DRIVE, TRACT "F-1" OF SAID SUBDIVISION, AND BEING ON A CURVE TO THE RIGHT HAVING A RADIUS OF 230.00 FEET AND  
TO WHICH POINT OF CURVE A RADIAL LINE BEARS N 89°59'48" E; THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY LINE  
THROUGH A CENTRAL ANGLE OF 31°05'48" TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE S 89°59'48" E  
THENCE S 89°59'48" E FOR 66.04 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE S 89°59'48" E  
FOR 105.81 FEET; THENCE S 00°00'00" E FOR 69.77 FEET; THENCE S 45°06'43" E FOR 36.57 FEET TO THE BEGINNING OF A NON-TANGENT CURVE  
TO THE LEFT HAVING A RADIUS OF 20.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N 45°06'43" W; THENCE SOUTHERLY  
ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°07'26" FOR 15.75 FEET; THENCE S 00°14'09" E FOR 166.40 FEET TO THE BEGINNING  
OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  
51°38'41" FOR 18.03 FEET; THENCE S 51°32'50" E FOR 67.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00  
FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°07'10" FOR 19.96 FEET; THENCE N 90°00'00" E FOR 144.50  
FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A  
CENTRAL ANGLE OF 09°40'18" FOR 25.32 FEET; THENCE N 80°19'43" E FOR 146.59 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE  
BEARS N 80°19'43" W; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°24'38" FOR 12.75 FEET; THENCE  
S 09°29'53" E FOR 18.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 500.00 FEET AND TO  
WHICH POINT OF CURVE A RADIAL LINE BEARS N 09°29'53" W; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  
09°40'18" FOR 18.00 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 124.00 FEET; THENCE WESTERLY  
ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°33'56" FOR 40.18 FEET; THENCE N 90°00'00" W FOR 188.49 FEET TO THE BEGINNING  
OF A CURVE TO THE RIGHT HAVING A RADIUS OF 224.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE  
OF 90°02'58" FOR 352.05 FEET; THENCE N 00°02'58" E FOR 240.90 FEET TO THE POINT OF BEGINNING.

THE DESCRIBED PARCEL CONTAINS 2.289 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTH LINE OF TRACT "E" OF HERITAGE BAY COMMONS AS PER THE PLAT RECORDED AT PLAT BOOK 43,  
PAGES 46 THROUGH 54, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	230.00'	31°05'48"	124.83'	123.30'	S 15°31'18" E
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EXHIBIT "B"

CONDOMINIUM SURVEY & PLOT PLAN  
BUILDINGS 15 & 16 SUBSTANTIAL COMPLETION  
JANUARY 7, 2008

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 89°59'48" E	66.04'
L2	S 00°00'00" E	69.77'
L3	S 45°06'43" E	36.57'
L4	S 09°29'53" E (R)	18.00'

**gbanks Engineering**  
Professional Engineers, Planners & Land Surveyors  
FLORIDA BUSINESS CORPORATION NUMBER 18 4480  
2015 NORTHMOORE PLAZA DRIVE, SUITE 200  
NAPLES, FLORIDA 34110  
PHONE: (239) 587-2081 FAX: (239) 587-2082

**CONDOMINIUM SURVEY & PLOT PLAN**  
**VISTA III AT HERITAGE BAY, A CONDOMINIUM**  
COLLIER COUNTY, FLORIDA

DATE	PROJECT	DESIGNED	DRAWN	CHECKED	SCALE	SHEET	OF	TOTAL NO. OF SHEETS
12-04-08	3117	WBS	TSC	DBB	1"=100'	2	7	23-483-286

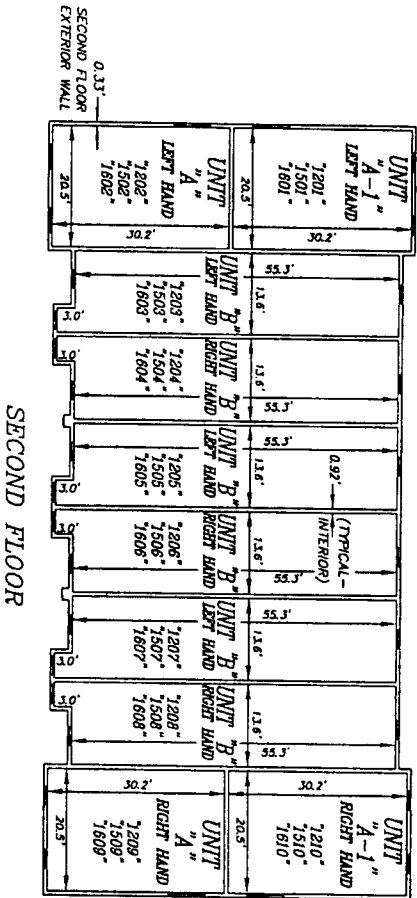


VISTA III AT HERITAGE BAY, A CONDOMINIUM  
SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA

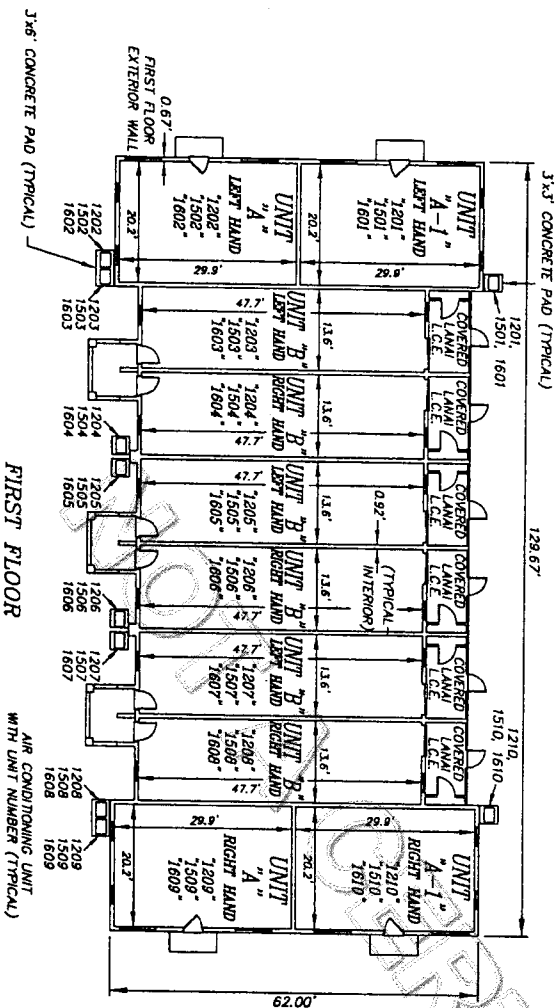
INSTRUMENT NO. \_\_\_\_\_  
SHEET 3 OF 7

GENERAL NOTES:

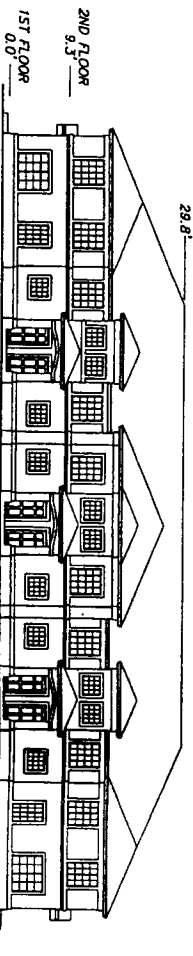
- L.C.E. = LIMITED COMMON ELEMENT
1. UNIT BOUNDARIES: EACH UNIT SHALL INCLUDE THAT PART OF THE BUILDING THAT LIES WITHIN THE FOLLOWING BOUNDARIES:
- A. UPPER & LOWER BOUNDARIES: THE UPPER AND LOWER BOUNDARIES OF THE UNIT SHALL BE THE FOLLOWING BOUNDARIES: THE PERIMETER BOUNDARIES OF THE PERIMETER BOUNDARIES.
- (1) UPPER BOUNDARIES: THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE CEILING OF THE UNIT.
- (2) LOWER BOUNDARIES: THE HORIZONTAL PLANE OF THE UNFINISHED UPPER SURFACE OF THE CONCRETE FLOOR OF THE UNIT.
- B. PERIMETER BOUNDARIES: THE PERIMETER BOUNDARIES OF THE UNIT SHALL BE THE VERTICAL PLANE OF THE UNFINISHED INTERIOR SURFACES OF THE PLASTERBOARD WALLS BOUNDING THE UNIT AS SHOWN IN EXHIBIT "B" HERETO, EXTENDED TO THEIR INTERSECTIONS WITH EACH OTHER AND WITH THE UPPER AND LOWER BOUNDARIES.
- C. INTERIOR WALLS: NO PART OF THE NON-STRUCTURAL INTERIOR WALLS WITHIN A UNIT SHALL BE CONSIDERED PART OF THE UNIT BOUNDARY.
- D. APERTURES: WHERE THERE ARE OPENINGS IN ANY PART OF THE UNIT BOUNDARY, INCLUDING WITHOUT LIMITATION, WINDOWS, DOORS AND SCREENS, THE BOUNDARIES OF THE UNIT SHALL EXTEND TO THE INTERIOR UNFINISHED SURFACES OF THE COVERINGS OF SUCH OPENINGS AND THE FRAMES THEREOF. WINDOWS, DOORS, SCREENS AND ALL FRAMES, CASINGS AND HARDWARE THEREFOR, ARE EXCLUDED FROM THE UNIT.
- E. UTILITIES: THE UNIT SHALL NOT BE DEEMED TO INCLUDE ANY PIPES, WIRING, DUCTS, OR OTHER UTILITY INSTALLATIONS THAT ARE PHYSICALLY WITHIN THE ABOVE DESCRIBED BOUNDARIES, BUT WHICH SERVE OTHER UNITS OR THE COMMON ELEMENTS. SUCH UTILITY INSTALLATIONS SHALL BE COMMON ELEMENTS.
- IN CASES NOT SPECIFICALLY COVERED IN THIS SECTION 1, OR IN ANY CASE OF CONFLICT OR AMBIGUITY, THE GRAPHIC DEPICTIONS OF THE UNIT BOUNDARIES SET FORTH IN EXHIBIT "B" HERETO SHALL CONTROL IN DETERMINING THE BOUNDARIES OF THE UNIT, EXCEPT THE PROVISIONS OF SECTION 1(D) ABOVE SHALL CONTROL OVER EXHIBIT "B".
2. ALL DISTANCES SHOWN HEREON ARE APPROXIMATE & IN DECIMAL FORM.



SECOND FLOOR



FIRST FLOOR



FRONT ELEVATION  
NOT TO SCALE

BUILDINGS 15 & 16 SUBSTANTIAL COMPLETION  
JANUARY 7, 2008

EXHIBIT "B"  
GENERAL NOTES & UNIT BOUNDARIES  
FIRST AND SECOND FLOORS  
BUILDINGS 15 & 16,  
PROPOSED BUILDING 12  
10 UNIT BUILDING WITH UNITS "A", "A-1" & "B"



DATE	REVISION	BY	CHKD	DESCRIPTION
1/7/08	1	DAVE SHEPPARD		ISSUED FOR PERMIT

**Banks Engineering**  
Professional Engineers, Planners & Land Surveyors  
2500 INTERNATIONAL BLVD, SUITE 400  
FORT LAUDERDALE, FL 33301  
PHONE: (954) 577-2001 FAX: (954) 577-2002

DATE	REVISION	BY	CHKD	DESCRIPTION
1/7/08	1	DAVE SHEPPARD		ISSUED FOR PERMIT

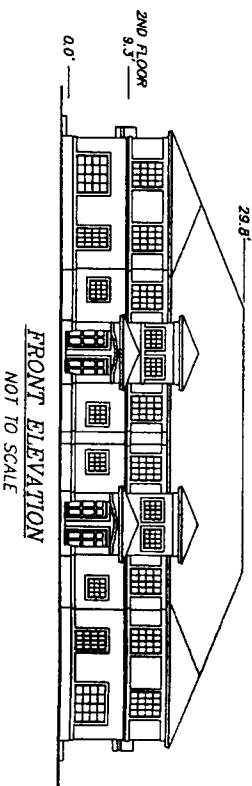
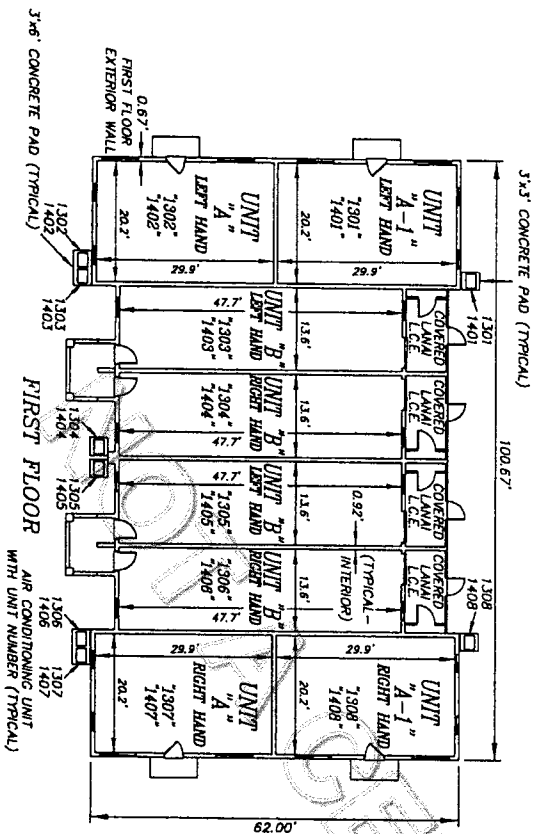
**VISTA III AT HERITAGE BAY, A CONDOMINIUM**  
COLLIER COUNTY, FLORIDA

U.S. HOME CORPORATION  
13-485-28K

SECTION 23, TOWNSHIP 48 SOUTH,  
LYING IN RANGE 26 EAST, COLLIER COUNTY, FLORIDA

**INSTRUMENT NO.** \_\_\_\_\_

**SHEET 4 OF 7**



- # GENERAL NOTES.
- I. L.C.E. = LIMITED COMMON ELEMENT
  1. UNIT BOUNDARIES: EACH UNIT SHALL INCLUDE THAT PART OF THE BUILDING THAT LIES WITHIN THE FOLLOWING BOUNDARIES:
    - A. UPPER & LOWER BOUNDARIES: THE UPPER AND LOWER BOUNDARIES OF THE UNIT SHALL BE THE FOLLOWING: THE PERIMETER BOUNDARIES.
      - (1) UPPER BOUNDARIES: THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE CEILING OF THE UNIT
      - (2) LOWER BOUNDARIES: THE HORIZONTAL PLANE OF THE UNFINISHED UPPER SURFACE OF THE CONCRETE FLOOR OF THE UNIT.
    - B. PERIMETER BOUNDARIES: THE PERIMETER BOUNDARIES OF THE UNIT SHALL BE THE VERTICAL PLANES OF THE UNFINISHED INTERIOR SURFACES OF THE PLASTERBOARD WALLS BOUNDING THE UNIT AS SHOWN IN EXHIBIT "B".
    - C. INTERIOR BOUNDARIES: INTERSECTIONS WITH EACH OTHER AND WITH THE UPPER AND LOWER BOUNDARIES OF INTERIOR WALLS WITHIN A UNIT SHALL BE CONSIDERED PART OF THE UNIT BOUNDARY.
    - D. APERTURES: WHERE THERE ARE OPENINGS IN ANY BOUNDARY, INCLUDING WITHOUT LIMITATION, WINDOWS, DOORS AND SKYLIGHTS, THE BOUNDARIES OF THE UNIT SHALL EXTEND TO THE INTERIOR UNFINISHED SURFACES OF THE COVENANTS OF SUCH OPENINGS, AND THE FRAMES THEREOF, THEREAFTER, WINDOWS, DOORS, SCREENS AND ALL OTHERS, FIXTURES AND HARDWARE THEREFOR, ARE EXCLUDED FROM THE UNIT.
    - E. UTILITIES: THE UNIT SHALL NOT BE DEEMED TO INCLUDE ANY PIPES, WIRING, DUCTS, OR OTHER UTILITY INSTALLATIONS THAT ARE LOCATED WITHIN THE UNIT, INCLUDING UNFINISHED BOUNDARIES, BUT WHICH SERVE OTHER UNITS.
  2. COMMON ELEMENTS: SUCH UTILITY INSTALLATIONS SHALL BE COMMON ELEMENTS.
- IN CASES NOT SPECIFICALLY COVERED IN THIS SECTION 1, OR IN ANY CASE OF CONFLICT OR AMBIGUITY, THE GRAPHIC REPRESENTATION OF THE UNIT BOUNDARIES SET FORTH IN EXHIBIT "B" HERETO SHALL CONTROL IN DETERMINING THE BOUNDARIES OF A UNIT, EXCEPT THE PROVISIONS OF SECTION 10) ABOVE SHALL CONTROL OVER EXHIBIT "B".
2. ALL DISTANCES SHOWN HEREON ARE APPROXIMATE & IN DECIMAL FORM.

**EXHIBIT "B"**

**GENERAL NOTES & UNIT BOUNDARIES  
FIRST AND SECOND FLOORS**

PROPOSED BUILDINGS 13 & 14  
8 UNIT BUILDING WITH UNITS "A", "A-1" & "B"

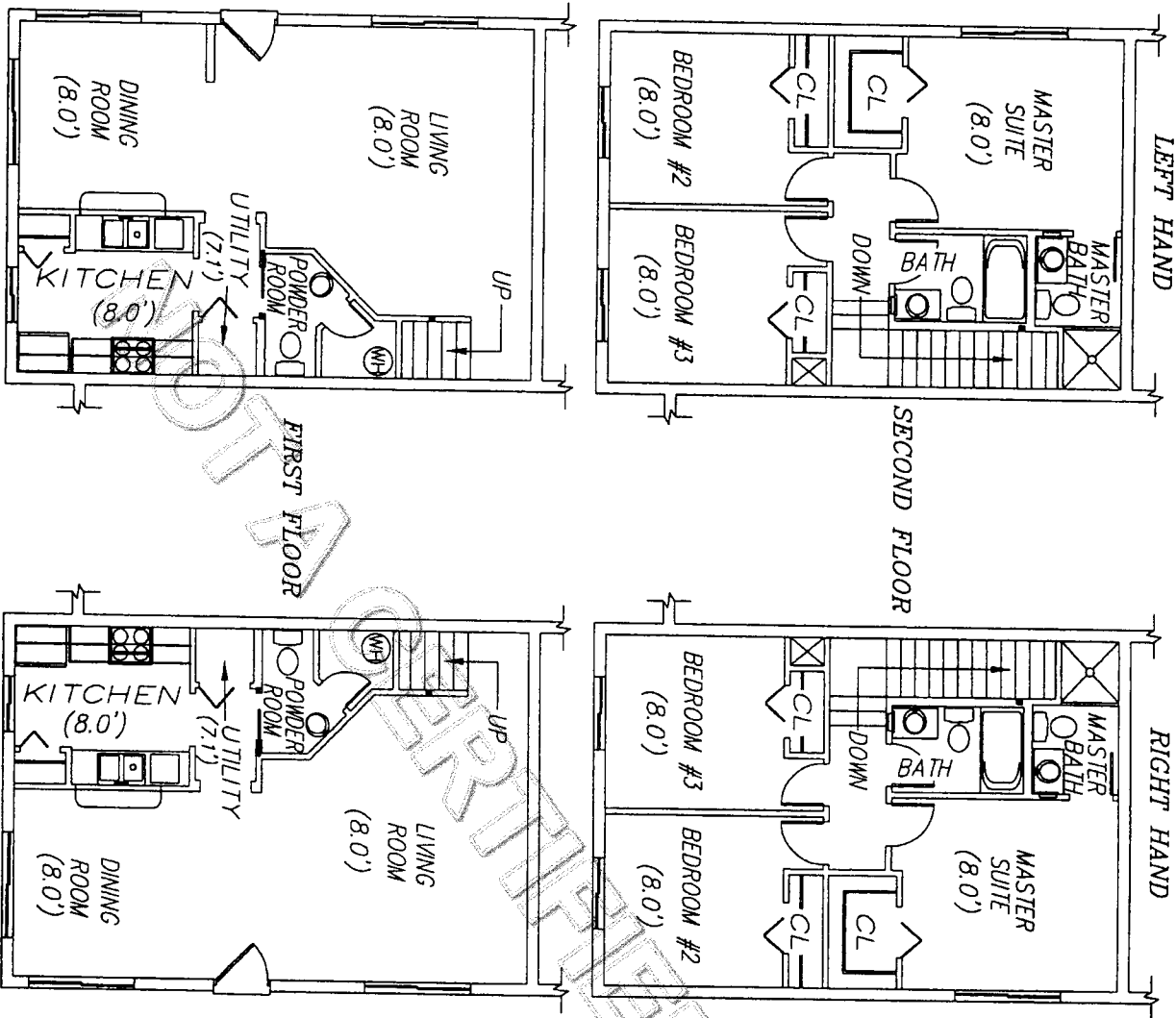
## Books Engineering

FLORIDA BUSINESS CERTIFICATION NUMBER LB 6600

**REPORTS, PUBLISHED 2011**  
**PHONE: (213) 907-2001 FAX: (213) 907-2002**

[illegible]

**EXHIBIT "2" (cont.)**



UNIT "A"  
ROOM SIZE

ALL ROOM SIZES ARE APPROXIMATE

BEDROOM #2	10.8'X10.4'
BEDROOM #3	10.8'X9.9'
DINING ROOM	10.9'X10.9'
KITCHEN	10.3'X9.1'
LIVING ROOM	14.9'X16.0'
MASTER SUITE	12.3'X11.2'
MASTER BATH	8.8'X4.9'
BATH	7.7'X4.9'

- NOTE:
1. CL INDICATES CLOSET
  2. WH INDICATES WATER HEATER
  3. (8.0') INDICATES FLOOR TO CEILING HEIGHT.
  4. AIR CONDITIONING AND HEATING EQUIPMENT ARE LIMITED COMMON ELEMENTS TO DESIGNATED UNIT.



EXHIBIT "B"  
UNIT "A" FLOOR PLAN  
FIRST AND SECOND FLOOR  
8 & 10 UNIT BUILDING

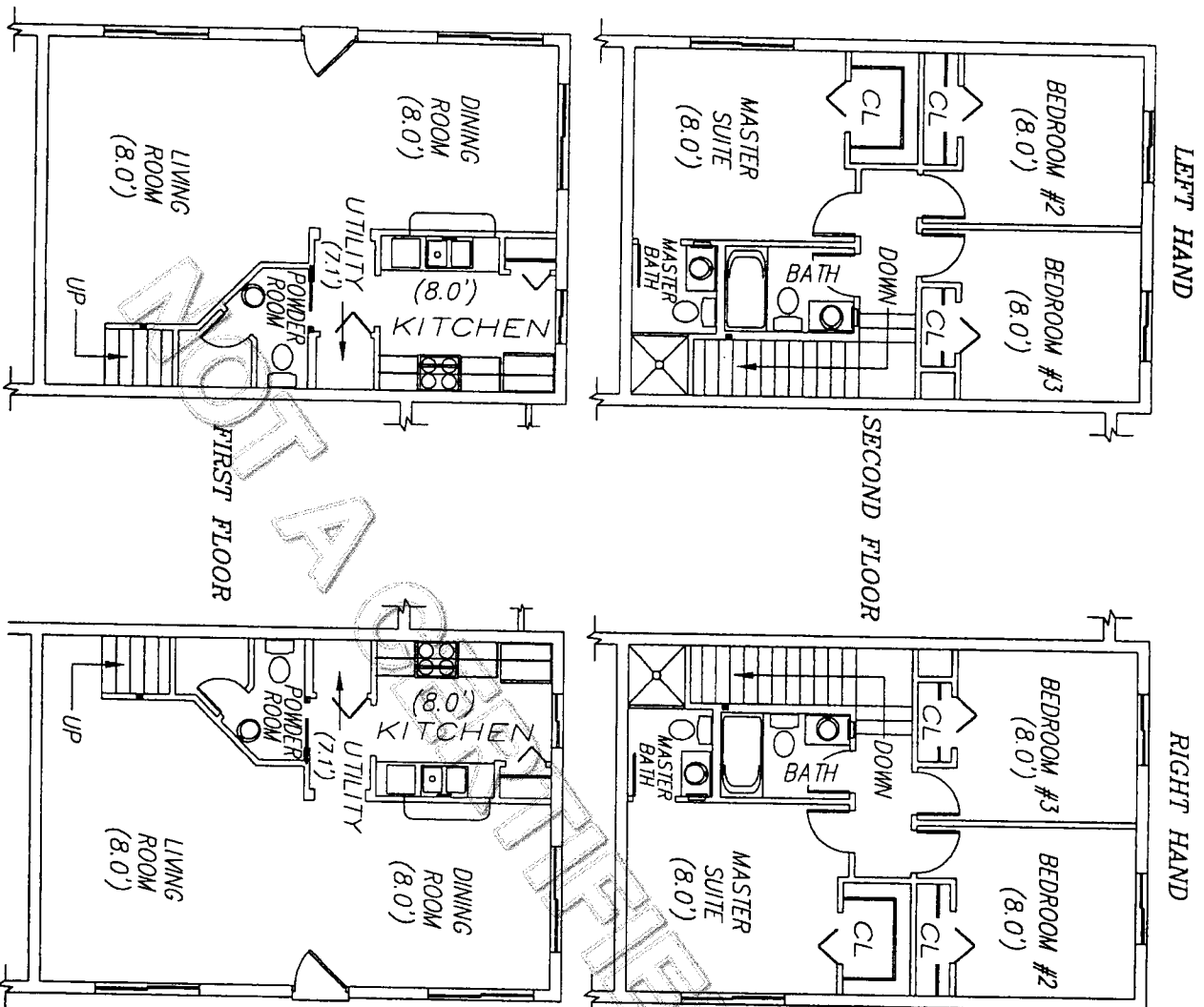
10	
9	
8	
7	
6	
5	
4	
3	
2	
1	
NO.	DATE
1	1-4-08
2	1-4-08
3	1-4-08
4	1-4-08
5	1-4-08
6	1-4-08
7	1-4-08
8	1-4-08
9	1-4-08
10	1-4-08

**Jbanks Engineering**  
Professional Engineers, Planners & Land Surveyors  
FORT MYERS ♦ NAPLES ♦ SARASOTA ♦ PORT CHARLOTTE  
2515 NORTHBROOK PLAZA DRIVE, SUITE 200  
NAPLES, FLORIDA 34119  
PHONE: (239) 597-2061 FAX: (239) 597-3082  
ENGINEERING LICENSE # EB 6469  
SURVEY LICENSE # LB 6460

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET	OF	(S-T-R)
5-15-07	2167	VHB3	DRB	DRB	TCS	1" = 10'	5	7	23-485-26E

VISTA III AT HERITAGE BAY, A CONDOMINIUM

U.S. HOME CORPORATION  
COLLIER COUNTY, FLORIDA



UNIT "A-1"  
ROOM SIZE

ALL ROOM SIZES ARE APPROXIMATE

BEDROOM #2	10.8'X10.4'
BEDROOM #3	10.8'X9.9'
DINING ROOM	10.9'X10.9'
KITCHEN	10.3'X9.1'
LIVING ROOM	14.9'X16.0'
MASTER SUITE	12.3'X11.2'
MASTER BATH	8.8'X4.9'
BATH	7.7'X4.9'

- NOTE:
- 1. CL INDICATES CLOSET
  - 2. WH INDICATES WATER HEATER
  - 3. (8.0') INDICATES FLOOR TO CEILING HEIGHT.
  - 4. AIR CONDITIONING AND HEATING EQUIPMENT ARE LIMITED COMMON ELEMENTS TO DESIGNATED UNIT.



EXHIBIT "B"

UNIT "A-1" FLOOR PLAN

FIRST AND SECOND FLOOR

8 & 10 UNIT BUILDING

NO.	DATE	REVISION DESCRIPTION	BY
1	1-4-08	BUILDING 15 & 18 SUBSTANTIAL COMPLETION	DJS
2			
3			
4			
5			
6			
7			
8			
9			
10			

**Banka Engineering**

Professional Engineers, Planners & Land Surveyors

FORT MYERS ♦ NAPLES ♦ SARASOTA ♦ PORT CHARLOTTE

2515 NORTHBROOK PLAZA DRIVE, SUITE 200

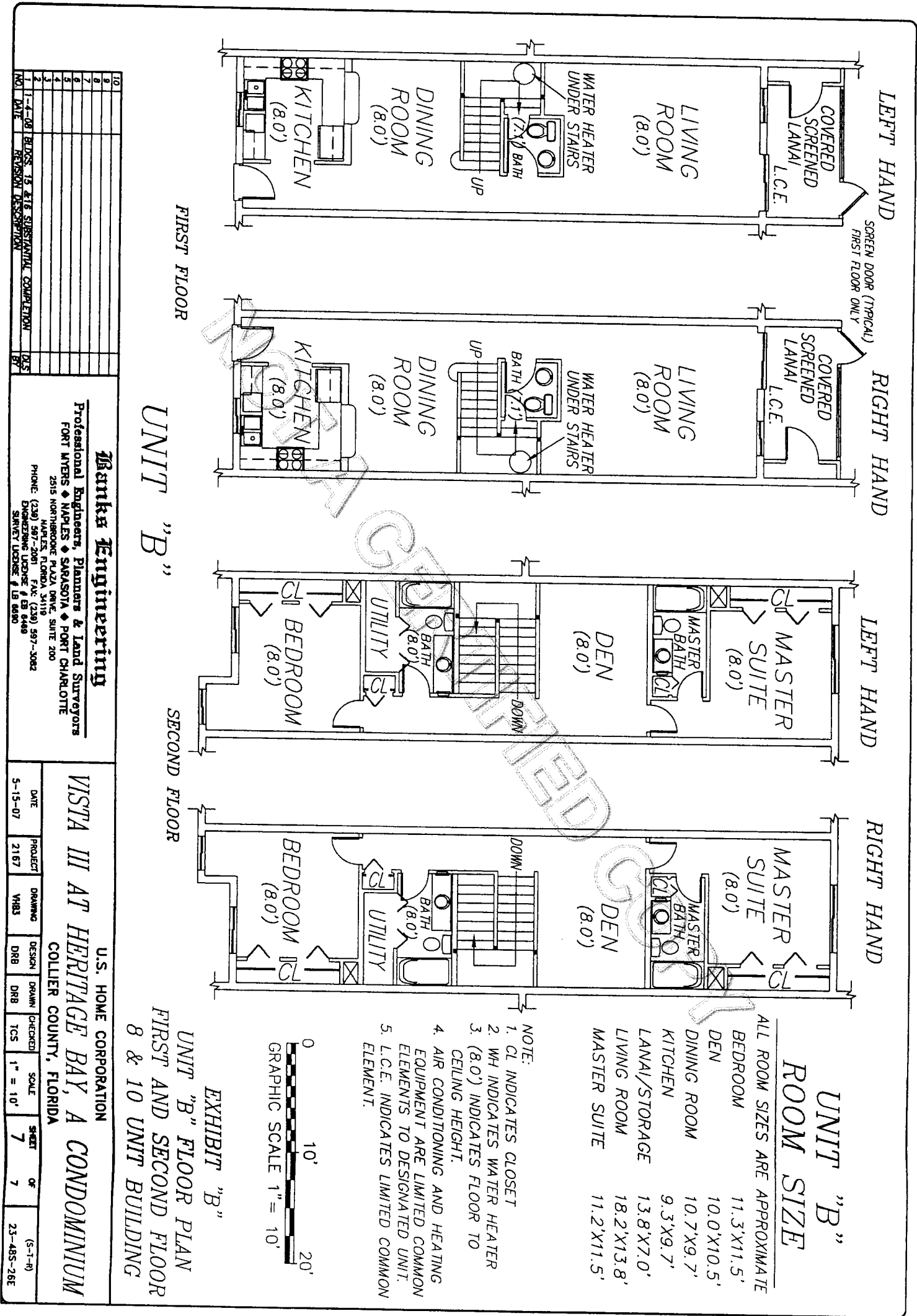
NAPLES, FLORIDA 34119

PHONE: (239) 597-2001 FAX: (239) 597-3082

ENGINEERING LICENSE # 03 6468

SURVEY LICENSE # LB 6690

U.S. HOME CORPORATION				
VISTA III AT HERITAGE BAY, A CONDOMINIUM				
COLLIER COUNTY, FLORIDA				
DATE	PROJECT	DRAWING	DESIGN	DRAWN
5-15-07	2167	VHB3	DRB	DRB
			TCS	SCALE
			1" = 10"	SHEET
				6
				7
				(5-1-6)
				23-485-26E



**Banks Engineering**

Professional Engineers, Planners & Land Surveyors  
 2515 Northbrooke Plaza Drive - Suite 200  
 Naples, Florida 34119  
 (239) 597-2061  
 Fax (239) 597-3082  
 Engineering License No. EB 6469  
 Surveying License No. LB 6690

**SURVEYOR'S CERTIFICATE**

AS TO VISTA III AT HERITAGE BAY, A CONDOMINIUM, **BUILDINGS 15 AND 16 ONLY**, SAID CONDOMINIUM BEING A PART OF TRACTS "E" AND "L-1" OF HERITAGE BAY COMMONS, AS RECORDED IN PLAT BOOK 43, AT PAGE 46 THROUGH 54, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA;

I, THOMAS C. SHAW, OF THE COUNTY OF LEE, OF THE 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 TO **BUILDINGS 15 & 16**, OF VISTA III AT HERITAGE BAY, A CONDOMINIUM, BEING A PART OF TRACTS "E" AND "L-1" OF HERITAGE BAY COMMONS, AS RECORDED IN PLAT BOOK 43, AT PAGE 46 THROUGH 54, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA AND IN COMPLIANCE WITH SECTION 718.104(e), FLORIDA STATUTES;
3. THAT THE ATTACHED SHEETS OF BANKS ENGINEERING DRAWING NO. 2167, REVISED JANUARY 7<sup>TH</sup>, 2008, TOGETHER WITH THE PROVISIONS OF THE DECLARATION RELATING TO MATTERS OF SURVEY, CONSTITUTE A CORRECT REPRESENTATION OF THE IMPROVEMENTS AS THEY NOW EXIST AND FROM THEM THE IDENTIFICATION, LOCATION, DIMENSIONS AND SIZE OF THE COMMON ELEMENTS, LIMITED COMMON ELEMENTS, AND OF EACH UNIT, CAN BE DETERMINED.
4. ALL PLANNED IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, LANDSCAPING, UTILITY SERVICES AND ACCESS TO THE UNIT AND COMMON-ELEMENT FACILITIES SERVING THE BUILDING, AS SET FORTH IN THE DECLARATION, ARE COMPLETE.

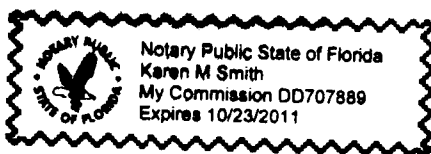
BY: *Thomas C. Shaw*  
 THOMAS C. SHAW  
 PROFESSIONAL SURVEYOR & MAPPER  
 FLORIDA CERTIFICATION NO. 4672

STATE OF FLORIDA  
 COUNTY OF LEE

The foregoing instrument was acknowledged before me this 7th day of January, 2008 by Thomas C. Shaw, who is personally known to me and who did not take an oath.

BY: *Karen M. Smith*  
 Notary Signature

*KAREN M SMITH*  
 Notary Printed Name



**EXHIBIT** 2 (cont.)

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Amendment, filed on November 14, 2007, to Articles of Incorporation for VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

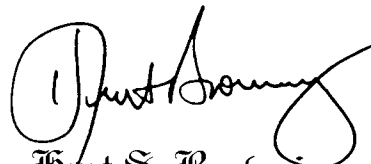
The document number of this corporation is N07000006914.

OR: 4322 PG: 3692

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Nineteenth day of November, 2007



EXHIBIT "3"

  
Kurt S. Browning  
Secretary of State

Articles of Amendment  
to  
Articles of Incorporation  
of

Vista III at Heritage Bay Condominium Association, Inc.

(Name of corporation as currently filed with the Florida Dept. of State)

N07000006914

(Document number of corporation (if known))

Pursuant to the provisions of section 617.1006, Florida Statutes, this **Florida Not For Profit Corporation** adopts the following amendment(s) to its Articles of Incorporation:

**NEW CORPORATE NAME (if changing):**

N/A

(must contain the word "corporation," "incorporated," or the abbreviation "corp." or "inc." or words of like import in language; "Company" or "Co." may **not** be used in the name of a not for profit corporation)

**AMENDMENTS ADOPTED- (OTHER THAN NAME CHANGE)** Indicate Article Number(s) and/or Article Title(s) being amended, added or deleted: **(BE SPECIFIC)**

Article IX, "Initial Directors" - Vice President and Secretary/Treasurer

shall be as follows (no change in addresses):

Vice President John Debitetto

Secretary/Treasurer John Billups

(Attach additional pages if necessary)  
(continued)



The date of adoption of the amendment(s) was: November 2, 2007

Effective date if applicable: \_\_\_\_\_  
(no more than 90 days after amendment file date)

**Adoption of Amendment(s) (CHECK ONE)**

- ☐ The amendment(s) was (were) adopted by the members and the number of votes cast for the amendment was sufficient for approval.
- ☒ There are no members or members entitled to vote on the amendment. The amendment(s) was (were) adopted by the board of directors.

Signature \_\_\_\_\_

(By the chairman or vice chairman of the board, president or other officer- if directors have not been selected, by an incorporator- if in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.)

Russell R. Smith

(Typed or printed name of person signing)

President/Director

(Title of person signing)

**FILING FEE: \$35**

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on July 12, 2007, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H07000179378. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N07000006914.

Authentication Code: 207A00044691-071307-N07000006914-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Thirteenth day of July, 2007



Kurt S. Browning  
Secretary of State

OR: 4322 PG: 3696



July 13, 2007

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC.  
10481 SIX MILE CYPRESS PKWY  
FT MYERS, FL 33966

The Articles of Incorporation for VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC. were filed on July 12, 2007, and assigned document number N07000006914. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H07000179378.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Dale White  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 207A00044691

P.O BOX 6327 - Tallahassee, Florida 32314

Received Time Jul.13. 2:44PM

((H07000179378 3)))

# **ARTICLES OF INCORPORATION OF VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.01201, Florida Statutes, these Articles of Incorporation are created by Christopher J. Shields, 1833 Hendry Street, Ft. Myers, Florida 33901, as sole incorporator, for the purpose set forth below.

## **ARTICLE I**

**NAME:** The name of the corporation, herein called the "Association", is Vista III at Heritage Bay Condominium Association, Inc., and its address is 10481 Six Mile Cypress Parkway, Fort Myers, FL 33966.

## **ARTICLE II**

**DEFINITIONS:** The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

## **ARTICLE III**

**PURPOSE AND POWERS:** The purpose for which the Association is organized as to provide an entity pursuant to the Florida Condominium Act for the operation of Vista III at Heritage Bay, a Condominium, located in Collier County, Florida. The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or Officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit except as specifically limited or modified by these Articles, the Declaration of Condominium or Chapter 718, Florida Statutes, as it may hereafter be amended, including without limitation the following powers and duties:

(A) To levy and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.

(B) To protect, maintain, repair, replace and operate the condominium property.

VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

((H07000179378 3)))

(C) To purchase insurance upon the condominium property for the protection of the Association and its members.

(D) To reconstruct improvements after casualty, and further improve the property.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.

(F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, to the extent provided for in the Declaration of Condominium.

(G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.

(H) To contract for the management and maintenance of the condominium property, and to delegate any powers and duties of the Association in connection therewith, except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.

(I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.

(J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

(K) To borrow money if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

### VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

#### ARTICLE IV

##### **MEMBERSHIP:**

- (A) The members of the Association are all owners of record legal title to one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one indivisible vote in Association matters, as further set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.

#### ARTICLE V

**TERM:** The term of the Association shall be perpetual.

#### ARTICLE VI

**BYLAWS:** The Bylaws of the Association may be altered, amended, or rescinded as provided.

#### ARTICLE VII

##### **DIRECTORS AND OFFICERS:**

- (A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.
- (B) Directors shall be elected by the members in the manner determined by the Bylaws. Directors may be removed, and vacancies on the Board of Directors filled, in the manner provided in the Bylaws.
- (C) The business of the Association shall be conducted by the Officers designated in the Bylaws. The Officers shall be elected each year by the Board of Directors, and they shall serve at the pleasure of the Board.

VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

## ARTICLE VIII

**AMENDMENTS:** Amendments to these Articles may be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Directors, or by written petition to the Board signed by the owners of at least one-fourth (1/4) of the units.

(B) Procedure. If any amendment to these Articles is so proposed, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

(C) Vote Required. Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the total voting interests at any annual or special meeting called for the purpose, or if it is approved in writing by a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains the text of the proposed amendment.

(D) Effective Date. An amendment which is duly adopted shall become effective upon filing with the Secretary of State, and subsequently recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as required for the recording of an amendment to the Bylaws.

## ARTICLE IX

**INITIAL DIRECTORS:** The initial Directors of the Association shall be:

Russell R. Smith  
10481 Six Mile Cypress Parkway  
Fort Myers, FL 33966

Andy Sorensen  
10481 Six Mile Cypress Parkway  
Fort Myers, FL 33966

VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

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Bryan Hurst  
10481 Six Mile Cypress Parkway  
Fort Myers, FL 33966

## ARTICLE X

### **INITIAL REGISTERED AGENT:**

The initial registered office of the Association shall be at:

1833 Hendry Street  
Fort Myers, Florida 33901

The initial registered agent at said address shall be:

Christopher J. Shields

## ARTICLE XI

**INDEMNIFICATION:** To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every Officer of the Association against all expenses and liabilities, including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be made a party because of his being, or having been, a Director or Officer of the Association. The foregoing right to indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

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

(B) A violation of criminal law, unless the Director or Officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director or Officer derived an improper personal benefit.

## VISTA III AT HERITAGE BAY – ARTICLES

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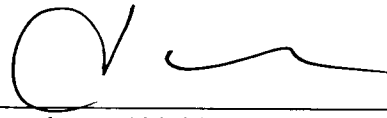
((H07000179378 3)))

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.

(E) Wrongful conduct by Directors or Officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

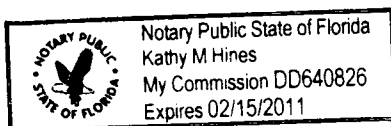
In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a Director or Officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 12th day of July, 2007.

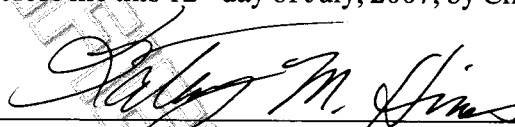

By:   
Christopher J. Shields

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of July, 2007, by Christopher J. Shields. He is personally known to me.



Notarial Seal

  
Notary Public Signature  
  
Printed Name of Notary Public

VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

((H07000179378 3)))

**ACCEPTANCE BY REGISTERED AGENT.**

Having been named to accept service of process for Vista III at Heritage Bay Condominium Association, Inc., at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.



---

Christopher J. Shields

F:\CJS\USHOME\Heritage Bay Golf & CC\ Vista III Articles Revised to change officers 07-12-07

VISTA III AT HERITAGE BAY – ARTICLES

((H07000179378 3)))

**BY-LAWS  
OF  
VISTA III AT HERITAGE BAY CONDOMINIUM  
ASSOCIATION, INC.**

**EXHIBIT "4"**

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NOT A  
CERTIFIED  
COPY

BY-LAWS  
OF  
VISTA III AT HERITAGE BAY CONDOMINIUM ASSOCIATION, INC.

1. **Identity.** These are the By-Laws of Vista III at Heritage Bay 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 Vista III at Heritage Bay Condominium (the "**Condominium**").

2. **Definitions.** All of the initially capitalized terms used herein shall have the meanings set forth in the Declaration of Condominium for Vista III at Heritage Bay Condominium (the "**Declaration**"), unless defined otherwise herein. In addition, the following terms shall have the following meanings:

"**Act**" shall mean the Florida Condominium Act as it is amended from time to time; provided, however, the Act shall not be incorporated in these By-Laws or in any other document governing the Condominium except as specifically set forth herein.

"**Articles**" shall mean the Articles of Incorporation for the Association, as the same may be amended from time to time.

"**Board**" shall mean the Board of Directors of the Association.

"**Committee**" shall mean any committee created by the Board.

"**Condominium Documents**" shall mean the Declaration, the Articles, these By-Laws, and the Rules, as the same may be amended from time to time.

"**Division**" shall mean the Florida Division of Land Sales, Condominiums, and Mobile Homes.

"**Members Meeting**" shall mean any meeting of the Unit Owners held in accordance with these By-Laws and the Act.

3. **Members.**

3.1 **Annual Members Meeting.**

3.1.1 **Date.** The Annual Members Meeting shall be held on the date, at the place, and at the time determined by the Board from time to time.

3.1.2 **Purpose and Notice.** The purpose of the Annual Members Meeting shall be stated in the notice of the meeting, which shall include an agenda. Advance notice shall be mailed to Unit Owners at least fourteen (14) days prior to the Annual Members Meeting, and shall be posted in a conspicuous place on the Condominium Property at least fourteen (14) continuous days prior to the Annual Members Meeting, all as specifically provided in the Act.

3.1.3 **Agenda.** The Agenda for an Annual Members Meeting shall include each of the following items, if applicable, and any additional items deemed appropriate by the Board: call to order; appointment of a chairman of the Annual Members Meeting (who need not be a Member or a Director); proof of notice of the Members Meeting or waiver of notice; appointment of inspectors of election; election of Director(s); reports of committees, unfinished business, new business, and adjournment.

3.2 **Special Members Meetings.**

3.2.1 **How Called.** A Special Members Meeting may be called by the President or by a majority of the Board of the Association, and must be called by the President or Secretary upon receipt of a written request from Unit Owners holding a majority of all the Voting Interests of the Association. Additionally, a Special

Members Meeting may be called by Unit Owners holding ten percent (10%) of the Voting Interests of the Association to recall a Director or Directors of the Board as permitted by the Act (currently Section 718.112(2)(j) of the Florida Statutes).

**3.2.2 Purpose and Notice.** Special Members Meetings may be called for any purpose permitted by law. The business conducted at a Special Members Meeting shall be limited to that stated in the notice of the Special Members Meeting, which shall include an agenda. Advance notice shall be mailed to Unit Owners at least fourteen (14) continuous days (25 continuous days if the proposed amendments are material and extraordinary as defined in Section 6.5.1 of the Declaration) prior to the Special Members Meeting, and shall be posted in a conspicuous place on the Condominium Property at least fourteen (14) continuous days prior to the Special Members Meeting, all as specifically provided in the Act.

**3.2.3 Agenda.** The Agenda for a Special Members Meeting shall include each of the following items, if applicable, and any additional items deemed appropriate by the Board: call to order; collection of votes not yet cast, appointment of a chairman of the Special Members Meeting (who need not be a Member or a Director); proof of notice of the Members Meeting or waiver of notice; special items of business, and adjournment.

**3.3 Waiver of Notice.** Notice of a Members Meeting may be waived by a Unit Owner unless prohibited by the Act.

**3.4 Affidavit or Certificate of Mailing.** The Association shall include in the official records of the Association an affidavit or certificate of mailing conforming with the requirements of the Act, which are incorporated herein by reference (currently Section 718.112(2)(d)2 of the Florida Statutes).

**3.5 Quorum.** A quorum at a Members Meeting shall be attained by the presence, either in person or by proxy, of Unit Owners entitled to cast thirty percent (30%) of the Voting Interests of the Unit Owners; provided, however, quorum requirements (or lack thereof) and requirements that a minimum number of ballots be cast for the election of Directors shall be as provided in the Act.

**3.6 Voting by Members.**

**3.6.1 Majority Vote.** The acts approved by Unit Owners holding a majority of the Voting Interests of the Association present in person or by proxy at a Members Meeting at which a quorum is present shall be binding upon all Unit Owners except where otherwise provided by law or in the Condominium Documents.

**3.6.2 Voting Interests.** Each Unit Owner shall be a Member of the Association. No person who holds an interest in a Unit only as security for the performance of an obligation shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Unit. There shall be one vote appurtenant to each Unit. For the purposes of determining who may exercise the Voting Interest associated with each Unit, the following rules shall govern:

**3.6.2.1 Unit Owned By Husband and Wife.** Either the husband or wife (but not both) may exercise the voting interest with respect to a Unit. In the event the husband and wife cannot agree, neither may exercise the voting interest.

**3.6.2.2 Trusts.** In the event that any trust owns a Unit, the Association shall have no obligation to review the trust agreement with respect to such trust. If the Unit is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Unit Owner of the Unit for all Association purposes. If the Unit is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the Member with respect to the Unit for all Association purposes. If the Unit is owned by the Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the Member with respect to the Unit for all Association purposes. If the Unit is owned by the Jones Family Trust, the Jones Family Trust may not exercise its voting interest unless it presents to the Association, in the form of an attorney opinion letter or affidavit reasonably acceptable to the Association, the identification of the person who should be treated as the Member with respect to the Unit for all Association purposes. If Robert Smith and Laura Jones, as Trustees, hold title to a Unit, either trustee may exercise



the voting interest associated with such Unit. In the event of a conflict between trustees, the voting interest for the Unit in question cannot be exercised. In the event that any other form of trust ownership is presented to the Association, the decision of the Board as to who may exercise the voting interest with respect to any Unit shall be final. The Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.

**3.6.2.3 Corporations.** If a Unit is owned by a corporation, the corporation shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the voting interest associated with such Unit. If the corporation fails to designate a person to vote, then the President or Vice-President may exercise the voting interest associated with such Unit. In the event of a conflict among the officers entitled to exercise a voting interest, the voting interest for such Unit cannot be exercised.

**3.6.2.4 Partnerships.** If a Unit is owned by a limited partnership, any one of the general partners may exercise the voting interest associated with such Unit. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Unit is owned by a general partnership, any one of the general partners may exercise the voting interest associated with such Unit. In the event of a conflict among general partners entitled to exercise a voting interest, the voting interest for such Unit cannot be exercised.

**3.6.2.5 Multiple Individuals.** If a Unit is owned by more than one individual, any one of such individuals may exercise the voting interest with respect to such Unit. In the event that there is a conflict among such individuals, the voting interest for such Unit cannot be exercised.

**3.6.2.6 Voting Certificate.** If a Unit is owned by more than one individual, a corporation, a partnership or a trust, the Board will require the use of a Voting Certificate identifying the Member with authority to vote on behalf of each such Unit.

**3.6.3 Liability of the Association.** The Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which the Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as the Association acts in good faith, the Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that the Association permitted or denied any person the right to exercise a voting interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

**3.7 Proxies.** Votes may be cast in person or by use of a limited proxy complying with the requirements of the Act. All of the provisions of the Act regarding general and limited proxies are incorporated into these By-Laws by reference (currently Section 718.112(2)(b)2 of the Florida Statutes). A proxy holder need not be a Unit Owner; provided, however, no person other than a designee of the Developer may hold more than five (5) proxies until after the Turnover Date.

**3.8 Adjourned Members Meetings.** If any proposed Members 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 Members Meeting from time to time until a quorum is present, provided notice of the newly scheduled Members Meeting is given in the manner required for the giving of notice of a Members Meeting.

**3.9 Action Without a Members Meeting.** Prior to the Turnover Date and unless prohibited by law, any action required to be taken or which may be taken at any Members Meeting may be taken without a Members Meeting, without prior notice, and without a vote of the Members if a consent in writing, setting forth the action so taken shall be signed by the Members (or persons authorized to cast the vote of any such Member as elsewhere herein set forth) holding not less than the minimum number of Voting Interests that would be necessary to approve such action. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Unit Owners 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 with a minimum of three (3) Directors. Notwithstanding the foregoing, the number of Directors may be increased and decreased to any odd number (so long as there are at least three (3) Directors) from time to time by the Developer prior to the Turnover Date, and after the Turnover Date upon the vote of Unit Owners holding a majority of the Voting Interests of the Association present in person or proxy at a Members Meeting at which a quorum is obtained. Any change in the number of Directors shall not become effective until the next Annual Members Meeting (e.g., prior to the mailing of any notice required for an election of Directors). Any Director designated or appointed by Developer need not be a Unit Owner or a resident of a Unit. All other Directors must be Unit Owners.

4.2 Developer's Right to Appoint. The Developer shall have the right to appoint all of the Directors comprising the Board 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. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board 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.

4.2.1 Turnover Date. Unit Owners other than the Developer are entitled and obligated to elect not less than a majority of the Directors comprising the Board no later than the earlier of (the "Turnover Date"):

4.2.1.1 three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to Unit Owners, or

4.2.1.2 three (3) months after ninety (90%) percent of the units that will be operated ultimately by the Association have been conveyed to unit owners, but if any units were sold with FHA/VA financing, then four (4) months after seventy-five (75%) percent of the Units that will be operated ultimately by the Association have been conveyed to Unit Owners, or

4.2.1.3 when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to Unit Owners and none of the others are being offered for sale by the Developer in the ordinary course of business, or

4.2.1.4 when some of the Units have been conveyed to Unit Owners and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, or

4.2.1.5 seven (7) years after recordation of the Declaration, or

4.2.1.6 such earlier date the Developer elects to turn over control of the Association to Unit Owners other than the Developer, in Developer's sole discretion, by causing all of Developer's appointed Directors to resign.

4.2.2 Turnover Meeting. Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect one or more Directors to the Board, or if the Developer has elected to accelerate such events aforesaid, the Association shall call, and give not less than sixty (60) days notice of an election in the manner provided in Section 718.112(2)(d) of the Florida Statutes. Notwithstanding any statements contained herein to the contrary, the initial notice period shall be sixty (60) days if the turnover meeting is being scheduled in accordance with Section 4.2.1.2. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so. The election shall proceed as provided in Section 718.112(2)(d) of the Florida Statutes. At the time that Unit Owners other than the Developer elect a majority of the Directors comprising the Board (or not more than ninety (90) days after such election with respect to the audited financial records of the Association), the Developer shall relinquish control of the Association and, at the Developer's expense, deliver to the Association all property of the Association held by or controlled by the Developer, and all items required to be turned over by the Act.

4.3 Election of Directors. All of the provisions regarding the election of Directors in the Act and in the Florida Administrative Code are incorporated herein by reference. The Act contains detailed and specific provisions, which may be changed by the Florida legislature from time to time. In general, the Act requires the election of Directors shall be held at the Annual Members Meeting. The regular annual elections, as well as elections to fill vacancies, shall be by written ballot or voting machine, and by a plurality of the votes cast, each person voting shall be entitled to cast his vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of Directors. Notwithstanding the provisions of this subsection, an election and balloting are not required unless more candidates file notices of intent to run or are "nominated" than vacancies exist on the Board. The Act and the Florida Administrative Code contain detailed and specific provisions on the manner in which notices must be sent to Unit Owners and the manner in which the elections must actually be held.

#### 4.4 Vacancies and Removal.

4.4.1 Vacancies Generally. Except as to vacancies resulting from removal of Directors by Members, vacancies in the Board occurring between Annual Members Meetings shall be filled by the remaining Directors even if less than a quorum (e.g., one Director remains), provided that only Developer may vote, in person or by limited proxy, to fill a vacancy on the Board previously occupied by a Board Member elected by Developer.

4.4.2 Recall of a Director. Directors may be removed from office in the manner provided for the removal of Directors in the Act. As stated in Section 718.112(2)(j) of the Florida Statutes, as it may be renumbered from time to time, a Director may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all Unit Owners. A Special Members Meeting for recall may be called by Unit Owners holding ten percent (10%) of the Voting Interests in the Association. Directors elected or appointed by Unit Owners other than the Developer shall be subject to recall only by the Unit Owners other than the Developer. Voting Interests owned or controlled by the Developer shall not vote in such recall, whether in person or by proxy. Directors appointed by the Developer shall not be subject to recall or removal by the Unit Owners.

4.5 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next Annual Members Meeting when his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

4.6 Regular Board Meetings. Regular Board Meetings may be held at such time and place as shall be determined, from time to time, by a majority of the Directors.

4.7 Special Board Meetings. Special Board Meetings 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.

#### 4.8 Notice Requirements for Board Meetings.

4.8.1 Generally. Notice of Board Meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least two (2) days prior to the meeting. Notice of Board Meetings shall be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours in advance for the attention of the Unit Owners except in the event of an emergency. Upon notice given by mail or personally to each Unit Owner, the Board shall adopt a rule designating a specific location on the Condominium Property upon which all notices of Board meetings, both regular and special, shall be posted.

4.8.2 Agenda. All notices for Board Meetings must specifically incorporate an agenda. Any item not included on the notice may be taken up on an emergency basis by a majority plus one of the Directors. Such emergency action shall be noticed and ratified at the next regular Board Meeting. Notice of Board Meetings at which Assessments shall be considered shall contain a statement that Assessments will be considered and describe the nature of such Assessments.

4.8.3 Additional Notice Requirements for Assessments and Other Special Items.

Notwithstanding the above, at any Board Meeting at which there will be proposed, discussed or approved (i) non-emergency Special Assessments, or (ii) amendments to Rules regarding Unit use, additional notice must be mailed or hand delivered to each Unit Owner as well as posted conspicuously on the Condominium Property, not less than fourteen (14) days prior to the Board Meeting. Evidence of compliance with the fourteen (14) day notice requirement shall be in the form of an affidavit executed by the person providing notice, which shall be placed in the official records of the Association.

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

4.10 Quorum. A quorum at Board Meetings shall consist of a majority of the Board. The acts approved by a majority of those present at a Board Meeting at which a quorum is present shall constitute the acts of the Board except when approval by a greater number of Directors is specifically required by the Condominium Documents.

4.11 Adjourned Board Meetings. If at any proposed Board Meeting there is less than a quorum present, the majority of those present may adjourn the Board Meeting from time to time until a quorum is present, provided notice of such newly scheduled Board Meeting is given as required herein. At any newly scheduled Board Meeting, any business that might have been transacted at the Board Meeting as originally called may be transacted.

4.12 Joinder in Board Meeting by Approval of Minutes. The joinder of a Director in the action of a Board Meeting by signing and concurring in the minutes of that Board Meeting shall constitute the approval of that Director of the business conducted at the Board Meeting.

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

4.14 Committees. The Board may create one or more Committees, appoint Board Members and/or Unit Owners to such Committees, and invest in such Committees such powers and responsibilities as the Board shall deem advisable to make recommendations to the Board regarding the Association or the Condominium. To the extent required by the Act, notice of Committee Meetings shall be given in the same manner as for Board Meetings.

4.15 Attendance. A Director who is present at any Director's meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

4.16 Voting. A Director may not vote by proxy and there shall be no secret ballot voting by Directors at a Board meeting, except that officers may be elected by secret ballot. The minutes of the meeting must reflect each Director's vote or abstention.

4.17 Unanimous Written Consent. A unanimous written consent setting forth any action to be taken by the Board and signed by all Directors shall be sufficient to constitute the consent and approval to such action by the Board. Nothing in this Section 4.17 shall allow any such action to be taken by the Board without a meeting of the Board to the extent a meeting of the Board is required to be held to take such action under the Act.

5. Minutes of Board and Members Meetings. The minutes of all Board Meetings and Members Meetings shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Directors at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

6. Unit Owners' Right to Participation at Members Meetings, Board Meetings, and Committee Meetings. All Members Meetings, Board Meetings, and Committee Meetings shall be open to Unit Owners. Unit Owners shall have a right to participate at all Members Meetings and Board Meetings as to all designated agenda items. The Board may adopt reasonable rules governing the frequency, duration, and manner of Unit Owner participation. Unit Owners shall have the right to tape record or videotape Members Meetings and Board Meetings subject to the reasonable rules adopted by the Division.

7. Powers and Duties. All of the powers and duties of the Association shall be exercised by the Board, including those powers and duties existing under the laws of Florida and the Condominium Documents. Such powers and duties shall be exercised in accordance with the Condominium Documents and the Act, and shall include, without limitation, the right, power and authority to:

- 7.1 Operate and maintain all portions of the Condominium Property other than the Units.
- 7.2 Convey a portion of the Common Elements to a condemning authority, governmental entity, or a public utility for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.
- 7.3 Employ and dismiss the personnel necessary for the maintenance and operation of the Common Elements.
- 7.4 Adopt and amend Rules concerning the details of the operation and use of the Condominium Property.
- 7.5 Maintain bank accounts on behalf of the Association and designate the signatories required therefor. The duty to maintain accounting records shall be according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.
- 7.6 Purchase (at a foreclosure sale or otherwise), lease, hold, mortgage, or otherwise acquire Units or other property in the name of the Association or its designee for the use and benefit of the Unit Owners or for use by a resident manager or concierge. Without limiting the foregoing, the Association, when authorized by a majority of the Voting Interests of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- 7.7 Obtain and maintain adequate insurance to protect the Association and the Condominium Property.
- 7.8 Make 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.
- 7.9 Enforce obligations of the Unit Owners.
- 7.10 Levy fines where appropriate against Units for the failure of the Unit Owner, or its occupant, licensee or invitee, to comply with any provision of the Declaration, these By-Laws or the reasonable rules of Association.
- 7.11 Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep, and/or maintenance of the Condominium Property, and to execute promissory notes and other

evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, provided that such actions are approved by a majority of the entire membership of the Board and a majority of the Voting Interests of the Unit Owners represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Voting Interests of the Unit Owners as may be specified in these By-Laws with respect to certain borrowing.

7.12 Contract for the management and maintenance of the Condominium Property and 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 and Special Assessments, preparation of records, enforcement of Rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special Assessments, promulgation of Rules and execution of contracts on behalf of the Association.

7.13 At its discretion, authorize Unit Owners or other persons to use portions of the Common Elements for private parties, gatherings, and other purposes and impose reasonable charges for such private use.

7.14 Grant, modify or move any easement, subject to the provisions of the easement, without the joinder of any Unit Owners, if the easement constitutes part of or crosses the Common Elements.

7.15 Levy Assessments and Special Assessments against Unit Owners and perform all other fiscal obligations of the Association.

7.16 The irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

7.17 Charge a Use Fee against a Unit Owner for the exclusive or non-exclusive use of all or a portion of the Common Elements or Condominium Property or as otherwise provided by the Declaration.

8. Officers. Officers elected by the Directors appointed by the Developer need not be Unit Owners. All other officers must be Unit Owners. The Board shall elect the officers listed below. Prior to the Turnover Date, any person may hold two (2) or more offices except that the President shall not also serve as the Secretary of the Association at the same time. Prior to the Turnover Date, the Board may, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to properly manage the affairs of the Association.

8.1 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.

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

8.3 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He 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.

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

8.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall perform all other duties incident to the office of the treasurer of an association and as may be required by the Directors or the President.

9. Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for any service or item to be supplied by such Director or officer; provided, however, management of the Condominium shall be through a company in the business of providing professional management services to associations. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties. This provision may only be amended by Unit Owners holding a majority of the Voting Interests in the Association.

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

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

11.1 Fiscal Year. The fiscal year of the Association shall be the calendar year.

11.2 Adoption of Budget by Board; Items. The Board shall from time to time, and at least annually, prepare a budget for the Condominium complying with Section 718.112(2)(f) of the Florida Statutes, which is incorporated herein by reference.

11.3 Notice of Budget Meeting. A copy of the proposed budget shall be mailed to each Unit Owner not less than fourteen (14) days prior to the Board Meeting at which the budget will be considered, together with a notice of that Board Meeting indicating the time and place of such meeting.

11.4 Special Membership Meeting on Budget. If a budget is adopted by the Board which requires Assessments against the Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments (as determined by the Act) for the preceding year, as hereinafter defined, upon written application of Unit Owners holding ten percent (10%) of the Voting Interests to the Board, a Special Members Meeting shall be held as provided in the Act (currently Section 718.112(2)(e) of the Florida Statutes, which is incorporated herein by reference).

11.5 Limitation on Developer Approved Budget Increases. As long as the Developer is in control of the Board, the Board shall not impose an Assessment for a year greater than one hundred fifteen percent (115%) of the prior year's Assessment (as determined pursuant to the Act), without the approval of Unit Owners owning a majority of the Voting Interests (including the Voting Interests of the Developer).

11.6 Collection of Assessments. Assessments shall be collected monthly from the Unit Owners. Assessments may be accelerated as provided in the Declaration and as permitted by the Act. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended and increased at any time by the Board upon compliance with the notice and other requirements of the Act.

11.7 Depository. The depository of the Association shall be such bank or banks in the County as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from these accounts shall be made only by checks signed by such person or persons as are authorized by the Directors.

11.8 Reserve Funds. The provision of the Act respecting reserve funds are incorporated herein.

11.9 Acceleration of Assessment. If a Unit Owner shall be delinquent in the payment of an Assessment, the Board may accelerate the remaining installments of the Assessment as permitted by the Declaration and the Act.

11.10 Fidelity Bonds. To the extent required by law, fidelity bonds shall be required for those persons who control or disburse funds of the Association in the amount(s) required by the Act. The premiums on such bonds shall be paid by the Association as a Common Expense.

11.11 Financial Reports. Within ninety (90) days (or as otherwise provided in the Act from time to time) following the end of the fiscal year, or annually on such date as is otherwise provided herein, the Board shall mail, or furnish by personal delivery, to each Unit Owner financial reports complying with the requirements of the Act.

12. Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all notice purposes until notified in writing of changes therein as provided above.

13. 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.

14. Amendments. Amendments to these By-Laws shall be proposed and adopted in the following manner:

14.1 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.

14.2 Proposal. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by Unit Owners holding not less than one-third (1/3) of the Voting Interests of the Association.

14.3 Approval. An amendment shall be approved as follows:

14.3.1 by Unit Owners holding not less than a majority of the Voting Interests in the Association in person or by proxy at a Members Meeting at which a quorum has been attained and by not less than sixty-six and two-thirds percent (66-2/3%) of the entire Board; or

14.3.2 by Unit Owners holding eighty percent (80%) of the Voting Interests of the Association in person or by proxy at a Members Meeting at which a quorum has been attained; or

14.3.3 prior to the date that Unit Owners other than Developer control the Board, by not less than one hundred percent (100%) of the entire Board.

14.4 Developer's Consent. Notwithstanding Section 14.3, so long as Developer is offering any Units in the Condominium for sale in the ordinary course of business, an amendment of these By-Laws which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to Developer regarding the sale of Units by Developer shall not be effective without the written consent of Developer. Developer shall have an absolute right to consent to such an amendment or withhold consent for any reason or no reason whatsoever.

14.5 Attendance Not Required. Directors not present in person at the meeting considering the amendment may express their agreement or disagreement in writing, provided that the same is delivered to the Secretary at or prior to the meeting. Such agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.



14.6 No Amendments Adverse to the Developer. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the consent of the Developer. No Amendment shall be made that is in conflict with the Articles or Declaration.

14.7 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice President with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of Lee County.

14.8 Procedure. The Act contains certain procedural requirements for amendments to By-Laws, all of which are incorporated herein by reference.

15. Rules and Regulations. The Board may, from time to time, adopt, modify, amend or add to the Rules. Copies of such modified, amended or additional Rules shall be furnished by the Board to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any Rules be adopted which would prejudice the rights reserved to the Developer. The initial Rules adopted by the Board together with these Bylaws, are attached hereto as Schedule A.

16. Mandatory Nonbinding Arbitration. The provisions of the Section 718.1255 of the Florida Statutes (as it may be renumbered or amended) respecting mandatory nonbinding arbitration are incorporated into and made part of these By-Laws.

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

18. Transfer Fees. The Association may charge up to the maximum transfer fees permitted by the Act. The Association may require that a prospective lessee place a security deposit in the amount permitted by the Act into an escrow account with the Association, subject to the requirements of the Act.

19. Construction and Conflicts. 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. In the event that these By-Laws conflict with the Articles and/or the Declaration, the Articles and By-Laws shall control. In the event that the Articles and the Declaration shall these By-Laws conflict with the Declaration, the Declaration shall control. This provision may not be amended.

20. Written Inquiries from Unit Owners. When a Unit Owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Unit Owner within thirty (30) days of receipt of the inquiry. The Board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry.

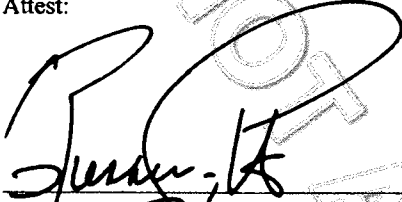
21. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define or limit the scope of these By-Laws of the intent of any provision hereof.

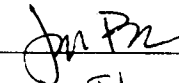
The foregoing constitute the first Bylaws of Vista III at Heritage Bay Condominium Association, Inc., and were duly adopted at a meeting of the Board of Directors held on July 12, 2007.

Date: December 3, 2007.

VISTA III AT HERITAGE BAY CONDOMINIUM  
ASSOCIATION, INC.

Attest:

  
Print Name: Russell Smith  
President

  
Print Name: John Billups  
Secretary

(SEAL)

CIS/LENNAR/VISTA III AT HERITAGE BAY/BYLAWS..Clean and Final 10-11-07

VISTA III AT HERITAGE BAY – BYLAWS

RULES AND REGULATIONS FOR  
VISTA III AT HERITAGE BAY CONDOMINIUM

The following Rules and Regulations govern Vista III at Heritage Bay Condominium. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration of Condominium for Vista III at Heritage Bay Condominium. These Rules and Regulations have been promulgated by the Board, and are subject to change from time to time.

1. The entrances, and like portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Condominium Property; nor shall any carts, bicycles, carriages, chairs, tables or any other similar objects be stored therein.

2. The personal property of Unit Owners must be stored in their respective Units.

3. No garbage cans, supplies, milk bottles or other articles shall be placed on the patios and terraces, or on any Common Elements except for designated trash areas, if any. No linens, cloths, clothing, curtains, rugs, mops or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, fences, patios, terraces, if any, or other portions of the Condominium Property.

4. No Unit Owner shall permit anything to fall from a window or door of the Condominium Property, nor sweep or throw from the Condominium Property any dirt or other substance into any of the patios, terraces or upon the Common Elements.

5. All refuse must be deposited in tied plastic bags and placed in areas designated for refuse disposal.

6. No Unit Owner, tenant, visitor, licensee or invitee shall park any type of motor vehicle other than in marked parking spaces.

7. No Unit Owner shall make or permit any disturbing noises in his Unit by himself or his family, servants, employees, agents, visitors or licensees, nor permit any conduct by such persons that will interfere with the rights, comforts or conveniences of other Unit Owners. No Unit Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph, television, radio or sound amplifier in his Unit in such a manner as to disturb or annoy other residents. No Unit Owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.

8. No radio or television installation may be permitted in any Unit which interferes with the television or radio reception of another Unit.

9. No sign, advertisement, notice, lettering or descriptive design shall be exhibited, posted, displayed, inscribed or affixed to the exterior of a Unit or in, on or upon any part of the Condominium Property, except signs used or approved by Association..

10. Association shall have the right to retain a pass key to all Units for the purpose of access to such Units during reasonable hours, when necessary for the maintenance, repair, or

replacement of any Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit or Units. If a lock is altered or a new lock installed the Unit Owner shall provide Association with an additional key and security code, if applicable.

11. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Unit or on the Common Elements.

12. Employees of Association are not to be sent out by Unit Owners for personal errands. The Board shall be solely responsible for directing and supervising employees of Association.

13. A Unit Owner who plans to be absent during the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to install and remove hurricane shutters, if any, and care for his Unit should the Unit suffer hurricane damage, and furnish Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of Association.

14. Food and beverages may not be consumed outside of a Unit except on terraces or patios which are Limited Common Elements appurtenant to the Unit.

15. A Unit Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, terraces, patios, or windows of the Building; provided, however, an American flag and official flags that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed as permitted by the Act. Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of Units shall be subject to disapproval by the Board, in which case they shall be removed and replaced with acceptable items. No Unit Owner shall install a screen enclosure, glass enclosure, or the like, to or upon the outside walls of the Building or on the Common Elements or Limited Common Elements without the prior written consent of the Board.

16. Unit Owners and occupants of Units shall park their bicycles and tricycles only within the Unit.

17. Unit Owners must seek the approval of the Board for the installation of hurricane shutters. The Board may approve or deny the request in its sole discretion. Notwithstanding the foregoing, the Board may not deny the installation of hurricane shutters conforming to specifications adopted by the Board. These Rules and Regulations, along with the hurricane shutter specifications set forth in this Section 17, have been adopted by the Board. Unit Owners are responsible for the maintenance, repair and replacement of the hurricane shutters. Subject to the applicable building codes, in the event that the hurricane shutters need to be replaced, a Unit Owner shall replace the hurricane shutters with the same color and type of shutters conforming to specifications adopted by the Board.

18. These Rules and Regulations shall not apply to the Developer, nor its agents or employees, and contractors, nor to Institutional First Mortgagees, nor to the Units owned by either the Developer or such Institutional First Mortgagees, unless the Rules of the Florida Department of Business and Professional Regulation or the Act require otherwise. All of these

Rules and Regulations shall apply, however, to all other Unit Owners and occupants even if not specifically so stated in portions hereof. The Board shall be permitted (but not required) to grant relief to one or more Unit Owners from specific Rules and Regulations upon written request therefore and good cause shown in the sole opinion of the Board.

19. Assigned parking spaces have been provided for the parking of private passenger automobiles of owners and their guests. No parking space is intended for the storage of boats, motorcycles, recreational vehicles, motor homes, trailers, semitrailers, house trailers, campers, truck campers, trucks, non-operational or invalidly licensed automobiles. No repairs or maintenance of vehicles may be performed, except emergency repairs. Because there are limited parking spaces, each owner is specifically cautioned that the Board of Directors may prohibit owners from keeping more than two motor vehicles on the premises on a permanent basis. Any vehicles parked in violation of the parking restrictions are subject to towing, with the owner of the vehicle responsible for all costs of towing.