

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**NOB HILL BUSINESS CENTER**  
**CONDOMINIUM**

Dated:

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NOB HILL BUSINESS CENTER CONDOMINIUM**

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**EXHIBITS LIST**

"A"	Legal Description of the Land
"B"	Survey, Plot Plan, and Graphic Description of Improvements
"C"	Percentage Interest in Common Elements and Allocation of Votes for Units
"D"	Articles of Incorporation
"E"	Bylaws

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**NOB HILL BUSINESS CENTER CONDOMINIUM**

**B & B BUSINESS CENTER, LLC, a Florida limited liability company ("Developer")**, does hereby declare as follows:

1. Introduction and Submission.

1.1 The Land. The Developer owns fee simple title to certain land located within the City of Sunrise, situated in Broward County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").

1.2 Submission Statement. The Developer hereby submits the Land and all Improvements erected or to be erected thereon, all easements, rights and appurtenances thereto, and all other property, real, personal or mixed, intended for use in connection therewith (excluding public utility installations), to the condominium form of ownership in the manner provided herein and in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered.

1.3 Name. The name by which this condominium is to be identified is **NOB HILL BUSINESS CENTER CONDOMINIUM** (hereinafter called the "Condominium").

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

2.1 "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date this Declaration is recorded and as it may be hereafter renumbered.

2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.

2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.

- 2.4 "Association" means NOB HILL Business Center Association, Inc., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.5 "Board" or "Board of Directors" means the board of directors and the members of the board of directors, from time to time, of the Association.
- 2.6 "Building" means the structure or structures on the Condominium Property in which the Units and the Common Elements are located, regardless of the number of such structures.
- 2.7 "Bylaws" means the Bylaws of the Association, as amended from time to time.
- 2.8 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units.
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Use rights in and to the common water line and common sewer line.
  - (f) Easement rights across common areas of the Project.
  - (g) Any other parts of the Condominium designated as Common Elements in this Declaration.
- 2.9 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Condominium and Condominium Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; and (b) costs attributable to any Units acquired by the Association or conveyed to the Association, including, without

limitation, assessments payable with respect thereto, the real property taxes attributable thereto and the costs of maintenance and insurance thereof. Common Expenses shall not include any separate obligations of individual Unit Owners.

- 2.10 "Common Surplus" means the amount of all receipts of the Association, including but not limited to Assessments, rents, profits and revenues on account of the Common Elements, in excess of the amount of Common Expenses.
- 2.11 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.12 "Condominium Property" means "Condominium Property" means that property, real and personal, which is leased by the Association for the use and benefit of the Owners. And the Land and personal property that is subjected to condominium ownership under this Declaration, all Improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the condominium.
- 2.13 "County" means Broward County, Florida.
- 2.14 "Declaration" or "Declaration of Condominium" means this instrument, and all exhibits attached hereto, as same may be amended from time to time.
- 2.15 "Developer" means B & B BUSINESS CENTER, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis.
- 2.16 "Dispute", for purposes of Section 19.1, means any disagreement between two or more parties that involves: (a) the authority of the Board under any law or under this Declaration, the Articles or Bylaws to: (i) require any Owner to take any action or not to take any action involving that Owner's Unit; or (ii) alter or add to a Common Area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Elements; the interpretation or

enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.

- 2.17 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or such successor agency, if any.
- 2.18 "Environmental Laws," for purposes of Article 21, means and includes all present and future laws and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits, and other requirements or guidelines of governmental authorities applicable to the Unit and relating to the environment and environmental conditions or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) ("CERCLA"), the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Clean Air Act, 33 U.S.C. § 7401, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601-2629, the Safe Drinking Water Act, 42 U.S.C. § 300f-300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101, et seq., and any so-called "Super Fund" or "Super Lien" law, environmental laws administered by the Environmental Protection Agency, any similar state and local laws and regulations, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder).
- 2.19 "Hazardous Substances", for purposes of Article 21, includes but is not limited to (i) materials defined as "Hazardous Waste" under the Federal Resource Conservation and Recovery Act and similar state laws, and (ii) "hazardous substances" as identified under the Federal Comprehensive Environmental Response, Compensation and Liability Act and especially in CERCLA §101(14) and as set forth in Title 40, Code of Federal Regulations, Part 302, and (iii) those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, polluting, or dangerous waste, substance or material, as such lists are now or at any time hereafter in effect, and (iv) asbestos, and (v) radon, and (vi) polychlorinated biphenyls, urea formaldehyde, radioactive matter, and medical waste, and (vii) petroleum products, and (viii) such other materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human, plant or animal health or well being.

- 2.20 "Hazardous Substance Activity", for purposes of Article 21, means the use, manufacturing, production, refinement, transfer, packaging, labeling, treatment, leaching, spill, cleanup, storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Unit or Condominium Property.
- 2.21 "Improvements" mean all structures, or any portion thereof, and artificial changes to the natural environment (exclusive of landscaping), located on the Condominium Property, including but not limited to, the Building.
- 2.22 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.
- 2.23 "Limited Common Elements" mean those Common Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units. References herein to Common Elements shall also include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.24 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgage.
- 2.25 "Project" means NOB HILL BUSINESS CENTER CONDOMINIUM.
- 2.26 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.27 "Unit Owner" or "Owner" means a record owner of legal title to a Condominium Parcel.

### 3. Description of Condominium.

- 3.1 Identification of Units. The Condominium Property consists of the following: (i) the Land, which has constructed thereon two (2) Buildings containing twenty-six (26) Units. Each such Unit is identified by a separate numerical designation. The designation of each such Unit is set forth on Exhibit "B" attached hereto. Exhibit "B" consists of a survey of the Land, a graphic



description of the Improvements located thereon, including but not limited to the Buildings in which the Units are located, and a plot plan thereof. Exhibit "B", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with each Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; (e) easement rights across common areas of the Project; and (f) other appurtenances as may be provided in this Declaration or the Act.

3.2 Unit Boundaries. Except as otherwise provided herein, each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
  - i. Upper Boundaries. The upper boundary shall be the horizontal plane(s) formed by the lower interior surface(s) of the unfinished ceiling of the Unit. In a Unit in which that ceiling forms more than one horizontal plane, the upper boundary shall include the plane(s) formed by the unfinished, vertical surface(s) that join the horizontal planes.
  - ii. Lower Boundaries. The lower boundary shall be the horizontal plane of the unfinished lower surface of the floor of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes formed by the interior undecorated unfinished surfaces of all walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures and Miscellaneous. Where there are apertures in any boundary, including, but not limited to, windows and doors, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials. All wires, conduits,

ducts, vents, concrete joists and other such facilities serving more than one Unit located within any walls or above the nonstructural acoustical ceiling lying below the upper boundary of the Unit, shall be Common Elements.

- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "B" hereto shall control in determining the boundaries of a Unit, except the provisions of Section 3.2(c) above shall control unless specifically reflected otherwise on such survey.
- (e) Property Excluded from Units. A Unit shall not be deemed to include foundations, columns, girders, beams, supports, interior load bearing walls, pillars, essential and permanent installations and equipment for power, lights, and exhaust fans, and all pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, or pass through more than one Unit or the Common Elements.

3.3 Limited Common Elements. Each applicable Unit or Units shall have the following Limited Common Elements, regardless of whether same are appurtenant to one or more than one Unit:

- (a) Air Conditioning, Heating and Other Equipment. For those Units with air conditioning and heating equipment or other equipment serving one or more but not all Units, such air conditioning and heating equipment or other equipment shall be a Limited Common Element of the Unit(s) so served. The Unit Owner(s) served by such equipment shall be solely responsible for operating, maintaining, repairing and replacing such equipment and for all costs related thereto. In the event that physical changes in the Building result in additional Units being served by such equipment or, in the alternative, Units ceasing to be so served, then the equipment shall be a Limited Common Element appurtenant to the Units added and shall cease to be one to the Units deleted.
- (b) Plumbing, Electrical and Telecommunications Equipment.
  - (1) The potable water lines and equipment which serve one or more but not all Units shall be a Limited Common Element of the Unit(s) so served. Such Limited Common Element shall begin at the boundary of each Unit served by such lines and equipment and shall extend to the point where such lines and equipment connect with the main meter measuring potable water consumption for such Unit(s).

- (2) The sewage collection lines and equipment which serve one or more but not all Units shall be a Limited Common Element of the Unit(s) so served. Such Limited Common Element shall begin at the boundary of each Unit served by such lines and equipment and shall extend to the point where such lines and equipment connect with the sewer line serving all of the Units.
- (3) The electrical lines and equipment which serve one or more but not all Units shall be a Limited Common Element of the Unit(s) so served. Such Limited Common Element shall begin at the boundary of each Unit served by such lines and equipment and shall extend to the point where such lines and equipment connect with the meter measuring electrical consumption for such Unit(s).
- (4) The telephone and telecommunication lines and equipment which serve one or more but not all Units shall be a Limited Common Element of the Unit(s) so served. Such Limited Common Element shall begin at the boundary of each Unit served by such lines and equipment and shall extend to the network interface point in the telephone room or elsewhere for such Unit(s).

The Unit Owner(s) served by each such Limited Common Element shall be solely responsible for operating, maintaining, repairing and replacing such lines and equipment and for all costs related thereto. In the event that physical changes in the Building result in additional Units being served by such equipment or, in the alternative, Units ceasing to be so served, then the equipment shall be a Limited Common Element appurtenant to the Units added and shall cease to be one to the Units deleted.

- (c) Doors, Windows and Gates. Each door, including but not limited to overhead doors, each window and each gate in or covering an aperture in the exterior walls bounding that Unit shall be Limited Common Elements reserved for the exclusive use of that Unit. The Unit Owner shall be solely responsible for operating, maintaining, repairing and replacing such doors, windows and gates, subject to the rights of the Association to review and approve any alterations to the Condominium Property.
- (d) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one or more Units (other than exterior staircases and walkways not labeled as Limited Common Elements on Exhibit "B" hereto) shall be deemed Limited Common Elements of the Units served. In the event of any doubt or

dispute as to whether any portion of the Common Elements constitutes Limited Common Elements or in the event of any question as to which Units are served thereby, a decision shall be made by the Board of Directors and shall be binding and conclusive when so made.

3.4 Easements. The following easements are hereby created:

- (a) Support. Each Unit, the Building and the Improvements shall have an easement of support and of necessity over, under and upon, and shall be subject to an easement of support and necessity in favor of, all other Units, the Common Elements, and any other structure or improvement which abuts any Unit, the Building or the Improvements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services, telecommunications and security systems, and drainage in order to serve the Condominium and/or the members of the Association. A non-exclusive easement shall exist for pipes, wires, ducts, vents, cables, conduits and other utility, telecommunications, security and similar systems in, over and through each Unit, which easement shall be located in that portion of each Unit, which lies below a plane parallel to and two (2) feet below the upper boundary of the Unit and above a plane parallel to and four (4) feet above the lower boundary of the Unit.

A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, telecommunications and security systems or other services or drainage facilities or the use of these easements. The Board of Directors or its agent shall have a right of access to each Unit to install, maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, telecommunications, security and similar systems, services and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency (which shall not require prior notice), entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Owner is absent when the giving of such notice is attempted). Drainage systems on the Condominium Property, if any, shall be maintained continuously in good condition by the Association and easements are granted hereby

over all Units in favor of all Owners and the Association with respect thereto.

- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (b) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner, their tenants, employees, agents, licensees and invitees, shall exist for pedestrian traffic over, through and across sidewalks, 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 purpose. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering, such easements (other than those on Condominium Parcels) shall automatically be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (e) Maintenance. The Association (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 maintenance of the Improvements or Units located or to be located thereon, or for any other purpose, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the Condominium Property or otherwise usurp the authority granted the Association herein and/or under the Act.
- (f) Sales and Leasing Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements as

model units and sales offices, to show the models and the Common Elements to prospective purchasers and tenants of Units, to erect on the Condominium and/or Common Elements signs and other promotional material to advertise Units for sale or lease and for any other similar purpose the Developer deems appropriate in its opinion.

- (g) Additional Easements. The Association, through its Board of Directors on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association irrevocably as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, drainage, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing utility or service easements or drainage facilities in any portion of the Condominium and/or Condominium Property, or the common areas of the Project, as applicable, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Common Elements, as the Association (upon a majority vote of the Board) shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health, welfare or business opportunities of the Unit Owners or their tenants, 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 their lawful purposes.

### 3.5 Parking Spaces.

- (a) The Developer specifically designates all parking spaces situated on the Condominium Property as Common Elements for the use by Unit Owners, and their invitees, agents and assigns, all in accordance with Exhibit "B" attached hereto. Each parking space shall be maintained by the Association as Common Elements, except that one or more parking spaces shall be reserved by the Association as "handicapped" or otherwise restricted. No Unit Owner shall have or acquire any fee simple title to the parking space at any time except as part of the Unit Owner's undivided share in the Common Elements.
- (b) For good cause or when compelled by the State, County or City of Sunrise, Florida, the Association shall have the right and authority to assign parking spaces from time to time upon written notice to the Unit Owners.

- (c) Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages his Unit, together with the Limited Common Elements appurtenant thereto (whether or not ordinarily assignable apart from the Unit), such Limited Common Elements shall not be assignable apart from the Unit unless released from the lien of such mortgage.

3.6 Sign Easements. Each Unit shall have an easement on the exterior of the Building for a sign identifying the Owner or tenant of the Unit. The Association reserves the right to regulate the style, type and material used for all exterior signage for the Condominium and to impose uniform signage requirements. No exterior signage shall be installed or modified without the prior written approval of the Association. In addition, all exterior signage shall comply with all applicable zoning and building codes.

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

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

5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth in Exhibit "C" attached hereto.

5.2 Voting. Each Unit shall be entitled to cast the votes allocated to the Unit in accordance with the provisions of the Bylaws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association. If a Unit Owner owns more than one Unit, the Voting Member for such Units shall be entitled to cast the number of votes for each Unit owned. The Association shall have two classes of voting membership:

Class A Class A members shall be all of those Unit Owners with the exception of the Developer. Class A members shall be entitled to the number of votes allocated for each Unit or fraction

thereof as more specifically set forth in Exhibit "C" attached hereto. When more than one (1) person holds such interest or interests in any Unit(s), all such persons shall be members, and the vote for such Unit(s) shall be exercised by one such member as agreed to by such members, and absent such agreement, no such vote shall be counted for purposes of any action taken.

Class B

The Class B member shall be the Developer. The Class B member shall be entitled to one (1) vote for each and every vote held by all other members of the Association combined plus one (1); provided, however, that notwithstanding any provision to the contrary, the Developer shall have the right to appoint the entire Board of Directors of the Association until one hundred (100) days after all Units have been conveyed to Unit Owners other than the Developer, or at any earlier date at the sole discretion of the Developer. The Developer shall call a meeting, as provided in the Bylaws for Special Meetings, to provide for the turnover of control of the Board of Directors to the Unit Owners at such time. The Developer shall have the right to appoint one (1) member to the Board of Directors for so long as the Developer owns any portion of the Condominium.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:
  - 6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by Unit Owners holding not less than a majority of the voting interests. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere herein provided, approvals must be by affirmative vote of Unit Owners owning in excess of two-thirds (2/3rds) of the voting interests.
  - 6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment, and such



amendment receives the affirmative vote of not less than two-thirds (2/3rds) of the voting interests in the Condominium. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.3 Mortgagee's Consent. 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 mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.4 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the executed of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or non-structural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of the divider walls, screens, screen enclosures, windows, interior nonstructural walls, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or constituting Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit or the Association, according to the applicable provision hereof, but in either case at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements to be maintained by the Unit Owners as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, neglect or misuse of specific Unit Owners in the opinion of the Board, in which case such cost and expense shall be paid solely by such Unit Owners.

8. Additions, Alterations or Alterations by the Association.

Whenever in the judgment of the Board of Directors, the Common Elements, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of any alterations limit, as may be established by the Board of Directors from time to time, in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by Unit Owners holding 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 less than the alterations limit, as applicable, in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the

above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

9. Additions, Alterations or Improvements by Unit Owner.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Element without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights to review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including

the successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

Notwithstanding anything herein contained to the contrary, the following alterations and/or improvements shall not require the prior approval of the Association: (i) replacement of any plate glass window with a window of the same material, color and size; (ii) replacement of an exterior air handler/compressor serving one or more Units, which may be effected by the Owner of any Unit directly served by the applicable air handler (and provided that the installation will not adversely affect any other Unit Owner and the replacement air handler/compressor is placed in the same location as the equipment being replaced).

- 9.2 In the event that any Unit Owner proposes to make any addition, alteration or improvement in or to a Unit which would entail or require any penetration of the roof or perimeter walls of a Unit or which constitute any use, addition, alteration or improvement to the Common Elements, the Condominium Property or any Limited Common Element or which would alter, affect or protrude into the Common Elements or any Limited Common Element or which would occupy or use any portion of the Common Elements or any Limited Common Element (collectively, "Conditional Use of Common Property"), then any such Conditional Use of Common Property shall be subject to approval by the Association, which approval shall not be unreasonably withheld if such Conditional Use of Common Property is a governmental requirement which cannot be accommodated within the boundaries of the Unit and further if the Unit Owner complies will all of the following requirements:
- (a) Unit Owners holding a majority of the voting interests present in person or by proxy at a duly called meeting of the Association approve or consent to such Conditional Use of Common Property.
  - (b) The Unit Owner requesting such Conditional Use of Common Property delivers to the Association and maintains during all times that such Conditional Use of Common Property continues a bond or security deposit for the demolition and removal of all such uses, additions, alterations or improvements in connection with its Conditional Use of Common Property and the restoration of the Common Elements, or Limited Common Element to its condition prior to such use, addition, alteration or improvement in connection with the Unit Owner's Conditional Use of Common Property.

- (c) The Unit Owner pays an annual fee to the Association for Conditional Use of Common Property based on the average rental of industrial space in the surrounding area and the square footage of the Common Elements, or any Limited Common Element used in connection with such Conditional Use of Common Property.
- (d) The Unit Owner shall be responsible for the operation, maintenance, repair, replacement and insurance of all uses, additions, alterations and improvements to the Common Elements, his Unit or any Limited Common Element in connection with such Conditional Use of Common Property. The Unit Owner shall be obligated to maintain at all times all uses, additions, alterations and improvements in connection with its Conditional Use of Common Property in a clean, orderly and safe condition.
- (e) Each Unit Owner, his heirs, personal representatives, successors and assigns shall be solely responsible for the operation, maintenance, repair, replacement and insurance of any such additions, alterations or improvements to the Common Elements, his Unit or any Limited Common Element in connection with such Conditional Use of Common Property from and after the date of installation or construction thereof. Neither the Developer nor the Association shall have any liability or responsibility for any damage to the Common Elements, Limited Common Elements or Units caused by or related to such Conditional Use of Common Property.

9.3 Improvements or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions in this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) alter or add to all or any part of the common areas of the Condominium. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.3 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 9.3 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned

Units; (iii) change the size of Developer-owned Units by combining separate Developer-owned Units into a single space (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

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

11.1 Power and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Condominium Property. The powers and duties of the Association shall include those set forth in the Articles and Bylaws (respectively, Exhibits "D" and "E" attached hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours to administer, maintain, repair and replace the Common Elements and Condominium Property.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, maintain, repair and replace the Common Elements and Condominium Property.
- (c) The duty to maintain accounting records according to accounting practices normally used by similar associations, which shall be open

to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.

- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who/which may be an affiliate of the Developer or the Developer itself) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by this Declaration, the Articles, Bylaws, rules and regulations and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by Unit Owners holding a majority of the voting interests represented at a meeting of the Association at which a quorum is attained.
- (f) The Association, when authorized by Unit Owners holding a majority of the voting interests represented at a meeting of the Association at which a quorum is attained, shall have the power to acquire, convey, lease and encumber personal and real property, whether or not contiguous to the lands of the Condominium. 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. Notwithstanding the foregoing, the Association shall be authorized to obtain title to Units through foreclosure of its lien without requiring the consent of Unit Owners.
- (g) The power to adopt and amend, upon a majority vote of the Board, rules and regulations covering the details of the operation and use of the Condominium Property.
- (h) The power to employ personnel (part-time or full-time), and if part-time, such personnel may be employees of other condominium associations and the allocation of their compensation shall be equitably apportioned among the associations for which such employee provides services.

- (i) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

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

- 11.2 Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations, improvements or other activities done by or on behalf of any Unit Owner(s) regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. Further, the Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms or as a result of the Association's failure or inability to access a Unit in accordance with Section 11.1(a) above.
- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration or by law.



- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles or Bylaws, applicable rules and regulations or applicable law, all approvals (or actions required or permitted to be given or taken by the Association) shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve or authorize the action through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal. References to a majority or percentage vote of Unit Owners shall be to the votes thereof and not to the number of Unit Owners voting.
- 11.6 Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:
- (a) Assessment of the Developer as a Unit Owner for capital improvements;
  - (b) Any action by the Association that would be detrimental to the sales of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
12. Determination of Common Expenses and Fixing Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Board shall then adopt such budget, as presented or as amended by them, by a majority vote. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived) the operation, maintenance, repair and replacement of the Common Elements and/or Condominium Property, costs of carrying out the powers and duties of the Association and any other expenses

designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time and need not be restricted or accumulated. Any budget adopted shall be subject to change, upon the approval of such change by the Board to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

13. Collection of Assessments.

- 13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his share of the Common Expenses or otherwise up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit against which the Assessments are made or otherwise.
- 13.2 Special and Capital Improvement Assessment. In addition to Assessments levied by the Association to meet the Common Expenses of the condominium and the Association, the Board of Directors may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:
- (a) "Special Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
  - (b) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Condominium Property.
  - (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable by Unit Owners in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed the alterations limit, as applicable,

or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of Unit Owners holding a majority of the voting interests represented at a meeting of the Association at which a quorum is attained.

- 13.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at fifteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$75.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, interest thereon and reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall continue for a longer period than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

Additionally, each Owner of any Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the "Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the next twelve (12) months' of Assessment installments to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 13.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 13.6 Institutional First Mortgagee. An Institutional First Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's receipt of the deed. However, the Institutional First Mortgagee's liability is limited to a period not exceeding six (6) months but in no event does the Institutional First Mortgagee liability exceed one percent (1%) of the original mortgage debt. The Institutional First Mortgagee's liability for such expenses or Assessments does not commence until thirty (30) days after the date the First Mortgagee received the last payment of principal or interest. In no event shall the Institutional First

Mortgagee be liable for more than six (6) months of the Unit's unpaid Common Expenses or Assessments accrued before the acquisition of title to the Unit by the Institutional First Mortgagee or one percent (1%) of the original mortgage debt, whichever amount is less. An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 13.7 Developer's Liability for Assessments. During the period from the date of the recording of this Declaration until the earlier of the following dates (the "Guarantee Expiration Date"): (i) the last day of the twelfth (12th) complete calendar month after the recording of this Declaration, (ii) the occurrence of an "Extraordinary Financial Event" (as hereinafter defined), or (iii) the date that control of the Association is transferred to Unit Owners other than the Developer as provided in the Bylaws and the Act, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to the Units owned by the Developer, provided: (i) that the regular Assessments for Common Expenses imposed on each Unit Owner other than the Developer prior to the Guarantee Expiration Date shall not increase during such period over the amount set forth in the initial estimated operating budget in effect on the date on which this Declaration is recorded, and (ii) that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed levels receivable from other Unit Owners and/or from income of the Association. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for one or more additional periods, or paying the share of Common Expenses and Assessments attributable to Units it then owns. As used in this subsection, an "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium and/or Condominium Property which exceeds by more than \$5,000.00 the insurance proceeds receivable by the Association as a result of the loss, or the entry of a judgment against the Association (or against a member or members of the Board of Directors if and to the extent those members are entitled to be indemnified by the Association as more particularly described in the Articles of Incorporation that exceeds by more than \$5,000.00 the insurance proceeds receivable by the Association as a result of the judgment, or an agreement by the Association (or said member or members of the Board of Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or against said Board members) that exceeds by more than \$5,000.00 the insurance proceeds receivable by the Association as a result of the settlement agreement.]
- 13.8 Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other moneys owed to the

Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

- 13.9 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly.
- 13.10 Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
14. Insurance. Insurance covering the Condominium Property and the Condominium Property shall be governed by the following provisions:
  - 14.1 Purchase, Custody and Payment.
    - (a) Purchase. All insurance policies described herein covering portions of the Condominium and Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
    - (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
    - (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
    - (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed). If no Insurance Trustee is appointed, then the payments for losses shall be made by the insurer to the Association.
    - (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall

be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

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

- (a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Condominium Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Condominium Property (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets, to the extent that any of same are required to be repaired or replaced by the Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things

related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

- (c) Workmen's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Condominium Property and Units if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity Insurance, if required by the Act or by the Primary Institutional First Mortgagee, covering all persons who control or disburse Association funds, such insurance to be in an amount not less than: (i) the greater of three (3) times the total monthly Assessments, (ii) \$50,000 per person insured, or (iii) such other amount as may be determined by the Board.
- (f) Condominium Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Condominium Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.



Every casualty insurance policy obtained by the Association, if required by the Primary Institutional First Mortgagee, shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgages of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by the Primary Institutional First Mortgagee, shall) obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors as provided in Section 14.10 below, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
  - (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property

shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

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

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

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a

certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
15. Reconstruction or Repair After Fire or other Casualty.
  - 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 50% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 60% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to that Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 60% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

(a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

- i. Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
- ii. Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
- iii. Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not

insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly affect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

- iv. Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- v. Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.
- 15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.
16. Condemnation.
- 16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance

Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

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

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their



mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
  - i. add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
  - ii. divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

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

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

Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 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 Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

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

16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and 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 all of the terms, provisions, conditions, limitations and restrictions set forth in this Declaration, including, without limitation, all of this Section 17 (the "Occupancy and Use Restrictions"); provided, however, each of the restrictions in this Section 17 or elsewhere in this Declaration may be further amplified and/or

limited by the rules promulgated by the Board, as applicable, from time to time. These restrictions shall include the following:

- 17.1 Occupancy. Units may be used for any purpose permitted by applicable zoning laws. Notwithstanding the foregoing, no Unit may be used for any purpose which is noxious, or which will adversely affect the insurability of the Condominium or increase the cost of any of the insurance coverage for the Condominium which the Association is obligated to carry by law or by this Declaration, or which will increase the risk of fire or other casualty.
- 17.2 Animals. No animal may be kept in any Unit or brought onto the Condominium or Condominium Property.
- 17.3 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to Section 11 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Condominium Property, including, but not limited to, installing any electrical wiring, television antenna, machinery, or air conditioning units, which in any manner change the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in section 9.1 hereof).
- 17.4 Use of Common Elements and Condominium Property. The Common Elements and Condominium Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 17.5 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Condominium Property by its residents, occupants or members.
- 17.6 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the condominium and/or Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.6. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

- 17.7 Leases. Leasing of Units or portions thereof shall be subject to the approval of the Association. Every lease shall be in writing, shall require a copy of the lease to be submitted to the Association as a precondition of the tenant being permitted occupancy of the Unit, and shall provide (and if not expressly in the written lease, if any, shall be deemed to provide) that the Association shall have the right (i) to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association, and (ii) to collect all rental payments due to the Owner and apply same against unpaid Assessments if, and to the extent that, the Unit Owner is in default in the payment of Assessments. Regardless of whether or not expressed in the applicable lease, if any, a Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his tenant(s) and occupant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all rules and regulations of the Association. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. If so required by the Association, Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of two (2) month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Condominium Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association).
- 17.8 Exterior Improvements. Without limiting the generality of Sections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association.
- 17.9 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Section 11.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units to the Association to use in the performance of its functions. No Owner shall change the locks to his Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.
- 17.10 Hurricane Shutters. The Board of Directors may, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. Subject to the provisions of Section 9.1 above, the Association

shall approve the installation or replacement of hurricane shutters conforming with the Board's specifications. A Unit Owner or occupant who plans to be absent or closed for business during all or any portion of the hurricane season must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.

17.11 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.

17.12 Effect on Developer. Subject to the following exceptions, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer nor to Units owned by the Developer.

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

18.1 Right of First Refusal.

- (a) Any Unit Owner who receives a bona fide offer to purchase or lease his Unit (such offer to purchase a Unit, is called an "Outside Offer," the party making any such Outside Offer is called an "Outside Offeror," and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept shall give notice by certified and/or registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require. The notice shall be accompanied by an environmental report prepared by a reputable environmental consultant within six months of the date of the notice and satisfying the ASTM standards for Phase I Assessments (currently ASTM Standard E1527). The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell or lease the Unit to the Association or its assignee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than thirty (30) days after receipt of such notice, together with such further information as may have been requested, the Association or its

assignee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said thirty (30) day period, by certified and/or registered mail, to purchase or lease such Unit upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

- (b) The Association shall promptly deliver or mail by certified mail a copy of the Outside Offer to each Unit Owner whose name appears on a separate registry maintained by the Association listing all current Unit Owners who have delivered, and not rescinded, written notice of the desire to be considered as the assignee of the Association in instances where the Association is entitled to exercise a right of prior first refusal with respect to an Outside Offer. The notice shall be mailed or delivered to such Unit Owner at its Unit in the Condominium (or the mailing address, if the Unit Owner does not occupy his Unit). Any such Unit Owner desiring to be named the assignee of the Association with respect to the Outside Offer shall, within five (5) days after receipt of a copy of the Outside Offer, deliver written notice to the Association that he is ready, willing and able to enter into a lease, or contract for the purchase of the Unit in accordance with and pursuant to all of the terms and conditions of the Outside Offer. If such notice is not received within the prescribed time frame, it shall be conclusively presumed that the assignee has not and will not exercise any right of first refusal.
- (c) The Association shall designate as the assignee the Unit Owner giving the required written notice whose Unit adjoins the Unit which is the subject of the Outside Offer. If there is more than one Unit which adjoins the Unit which is the subject of the Outside Offer, then the Unit Owner to be designated as the assignee shall be determined from among the Owners of such adjoining Units by lot. If none of the Unit Owners giving the required written notice to the Board owns a Unit adjoining the Unit which is the subject of the Outside Offer, then the Association shall designate as its assignee the Unit Owner whose written notice was received earliest. In the event that no Unit Owner gives the required written notice to the Association, then the Association shall have the right to exercise a right of first refusal within the time described above. In the event the Association or its assignee has not, within the time described above notified the Offeree Unit Owner of its intention to exercise its right of first refusal, such Unit Owner shall be free to consummate such sale or lease with the Outside Offeror in accordance with the terms of the Outside Offer. In the event the transaction between the Offeree Unit Owner and the Association's assignee shall fail to be consummated through no fault of the Offeree Unit Owner, such Offeree Unit Owner shall be free to

consummate the sale or lease with his Outside Offeror in accordance with the terms of the Outside Offer.

- (d) In the event the Association or its assignee shall fail to accept such offer or, in the case of a lease, such failure to reject the proposed lease as permitted by Section 17.8 hereof, within thirty (30) days after receipt of notice and all additional information requested, as aforesaid, the Offeree Unit Owner shall be free to accept the Outside Offer after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its assignee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not accept, in writing, the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer but such sale shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this Article.
- (e) In the event the Association shall timely elect to purchase such Unit or lease such Unit or to cause the same to be purchased or leased by its assignee, title shall close or a lease shall be executed, in accordance with the terms of the Outside Offer, within forty five (45) days after the giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offer, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner shall convey the same to the Association, or to its assignee by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good, marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title commitment (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest if any and Common Expenses shall be apportioned between the Offeree Unit Owner and the Association, or its assignee, as of the closing date. In the event such Unit is to be lease, the Offeree Unit Owner shall execute and deliver to the Board or to its assignee a lease between the Offeree Unit Owner, as landlord, and the Association, or its assignee, as tenant, covering such Unit for the rental and term contained in such Outside Offer.
- (f) The Association may charge a transfer fee in connection with such Outside Offer and right of first refusal, which fee shall not be in excess

of the charges reasonably required for same, and such charge shall not exceed the maximum amount allowed under the Act (as its may be amended from time to time).

- (g) Any deed to an Outside Offeror shall automatically be deemed to provide that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, and all other agreements, documents or instruments affecting the Condominium Property, as the same may be amended from time to time.
- (h) Any purported sale or lease of a Unit in violation of this Section 18.1 shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to void a conveyance. Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.
- (i) The foregoing restrictions shall not apply to Units owned by the Developer or by any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure or in satisfaction of debt. The Developer and such Institutional First Mortgagees shall have the right to sell Units they own without having to first offer the same for sale to the Association.

18.2 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

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

18.4 Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by an officer, which officer has been approved and authorized to sign said certificate by a resolution of the Board of Directors, of the Association stating that the provisions of subsection 18.1 have been satisfied by a Unit Owner, or stating that the right of first refusal contained therein has



been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated, shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of such subsection have, in fact, terminated or been waived. The Association may charge a fee in connection with the furnishing of such certificate, which fee shall not be in excess of the charges reasonably required by same, and such charge shall not exceed the maximum amount allowed under the Act (as it may be amended from time to time).

- 18.5 Financing of Purchase of Units by the Association. The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.
- 18.6 Exceptions. The provisions of subsection 18.1 shall not apply with respect to any sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation nor other entity where the Unit Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity, or to any one or more of the above, (b) the Developer, (c) the Association, (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or (e) an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure or in satisfaction of debt; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.
- 18.7 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Article 18.
- 18.8 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.
19. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with

the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

- 19.1 **Mandatory Mediation of Disputes.** Prior to the institution of court litigation, the parties to a Dispute shall petition the American Arbitration Association for nonbinding mediation. The mediation shall be conducted according to rules of the American Arbitration Association and before a mediator employed by the American Arbitration Association. The filing of a petition for mediation shall toll the applicable statute of limitation for the applicable Dispute, until the mediation proceedings are completed. Any mediation decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the mediation decision. The prevailing party in the mediation proceeding shall be awarded the costs of the mediation, and attorneys's fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be assessed the other party's mediation costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the mediation decision, if the judgment upon the trial de novo is not more favorable than the mediation decision. If the judgment is more favorable, the party who filed a petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the mediation award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an mediation award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the mediation award.
- 19.2 **Negligence and Compliance.** A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner

required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 19.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

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

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

21. Environmental Matters.

- 21.1 Obligations. No Hazardous Substances shall be used, manufactured, produced, refined, transferred, packaged, labeled, treated, leached, spilled, cleaned, stored, held, released, emitted, discharged, generated, processed, abated, removed, disposed, handled or transported or in any manner dealt with in any Unit or on the Condominium, except Hazardous Substances

which are stored, handled, used and disposed of in strict compliance with Environmental Laws and subject to the limitations of Section 17.1 of this Declaration. Each Unit shall at all times be owned, occupied, operated and maintained in strict compliance with all of the Environmental Laws. Each Unit Owner and tenant or occupant of a Unit shall at all times maintain in full force and effect all necessary permits, licenses, approvals and other authorizations required under the Environmental Laws for the Unit and the use or intended use thereof. No portion of the Condominium shall be used as a landfill or a dump. No Unit Owner and tenant or occupant of a Unit shall install any underground tanks of any type; nor shall any Unit Owner and tenant or occupant of a Unit allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.

21.2 Indemnification. Each Unit Owner, occupant of a Unit, tenant or other invitee of a Unit Owner ("Indemnitor") agrees to indemnify and hold harmless the Association, its officers, directors, employees, agents, contractors, consultants, licensees, all other Unit Owners and tenants and the Developer (collectively, "Indemnitees") from and against any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, all amounts for investigation, monitoring, remediation, response, action, removal, restoration and permits and the reasonable fees and disbursements of attorneys, environmental experts, and accountants) arising as a result of or in connection with any of the following (the "Indemnified Claims"):

- (a) any Hazardous Substance Activity occurring in, on or about the Indemnitor's Unit or the Condominium;
- (b) any violation of or failure to comply with any applicable Environmental Laws relating to the Indemnitor's Unit, the Condominium or to the ownership, use, occupancy, or operation of the Unit;
- (c) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity;
- (d) any preparation, investigation, inspection or execution of any remediation work in connection with any Hazardous Substance Activity; or
- (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against the Association, regardless of when such claim, demand, or cause of action or other proceeding brought or asserted, which directly or indirectly relates to, arises from or is based on any of the matters described in Clause 21.2(a), (b), (c), (d) or any allegation of any such matters.

The Indemnified Claims shall include all reasonable attorney's fees and costs (whether or not legal action has been instituted) at investigative, trial and appellate levels incurred by Indemnitees. Indemnitor agrees to undertake the defense of any administrative or judicial proceeding including any appellate proceeding arising from or related to the Indemnified Claims (provided, however, with respect to any such appellate proceeding Indemnitor shall have the right, in lieu of defending such appellate proceeding, to discharge or satisfy the underlying claim or obligation giving rise to such appeal) and to indemnify Indemnitees from any and all costs, attorney's fees, fines or costs arising out of such proceedings.

Indemnitor shall promptly advise Association in writing of any of the following (an "Environmental Complaint"): (i) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting Indemnitor, the Unit or Condominium from any person or entity or governmental agency or body (including, without limitation, the EPA), (ii) any governmental or regulatory actions instituted or threatened in writing under any Environmental Laws received by Indemnitor affecting the Unit or Condominium or any indemnity hereunder, including, without limitation, any notice of inspection, abatement or noncompliance, (iii) all claims made or threatened in writing by any third party against Indemnitor relating to any Hazardous Substance or a violation of Environmental Laws, (iv) Indemnitor's discovery of any occurrence or condition in the Unit or Condominium or real property adjoining the Condominium which could subject Indemnitor, the Association, any other Unit Owner, any Unit or the Condominium to a claim under any Environmental Law, and (v) Indemnitor's discovery of any Hazardous Substance Activity in, on, under or about the Unit or Condominium or the existence of any Hazardous Substances emanating from or passing through the Unit. Indemnitor shall provide Association with a copy of any request for information or any inspection of the Unit by any governmental authority with respect to any Hazardous Substances or Hazardous Substance Activity and a copy of any response to each such request or inspection and any written notice of any pending or threatened proceeding, advice or inquiry concerning the Unit (or any portion thereof) which relates to any Hazardous Substances, Hazardous Substance Activity or pollution or protection of the environment, promptly after delivery thereof.

The rights of the Association under this Article shall be in addition to any other rights and remedies of the Association against Indemnitor at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any such rights.

- 21.3 Notice of Possible Claims. If any Indemnatee shall receive notice of an assertion by any third party of a claim against the Indemnatee that, in the

judgment of the Indemnitee, may result in the incurrence by the Indemnitee of damages for which the Indemnitee would be entitled to indemnification pursuant to this Declaration, the Indemnitee shall promptly deliver to Indemnitor a written notice describing in reasonable detail such claim and Indemnitor shall assume the defense of the Indemnitee against such claim (including the employment of counsel, who shall be counsel satisfactory to the Indemnitee, and the payment of expenses). The Indemnitee shall have the right to employ separate counsel in any such action or claim and to participate in the defense thereto. The fees and expenses of such counsel shall be at the expense of Indemnitor. Indemnitor shall be liable to indemnify the Indemnitee for any settlement of any such action or claim or if there be a final judgment not on appeal for the plaintiff in any such action, Indemnitor shall indemnify and hold harmless the Indemnitee from and against any loss or liability by reason of such settlement or judgment.

21.4 Notice of Actual Claim. If the Indemnitee shall incur any damages and shall consider that such Indemnitee is entitled to be indemnified against such damages by Indemnitor hereunder, such Indemnitee shall deliver a certificate signed by a representative of the Indemnitee (the "Certificate") to Indemnitor, which Certificate shall

- (a) state that the Indemnitee has paid or properly accrued damages for which such Indemnitee is entitled to indemnification pursuant to this Agreement; and
- (b) specify in reasonable detail each individual item of damage included in the amount so stated, the date such item was paid or properly accrued and the nature of the default or breach of covenant to which each such item is related and the computation of the amount to which such Indemnitee claims to be entitled hereunder.

21.5 Payment of Claim. Within fifteen (15) days after receipt of the Certificate set forth above: (a) Indemnitor shall pay to the Indemnitee in cash an amount equal to the amount set forth in the Certificate if the Indemnitee shall have previously paid such claim or (b) Indemnitor shall pay such amount necessary to satisfy the claim directly to the holder of the claim if the Indemnitee has not previously paid the claim; provided, however, that, in the event that the Indemnitee subsequently recovers any or all of the amount of the claim from a party other than Indemnitor, the Indemnitee shall reimburse immediately to Indemnitor in cash an amount equal to the amount of such previously paid claim which shall have been recovered. Any amount due and payable hereunder to the Association by Indemnitor which is not paid within fifteen (15) days after receipt of the Certificate set forth from the Association shall bear interest from the date of such Certificate at the maximum lawful rate and shall be secured by a lien against the Indemnitor's Unit.

- 21.6 Audits; Investigations; Remediation. The Association may obtain, at Indemnitor's expense, an environmental audit prepared by an independent engineer or other qualified environmental consultant of the Association's choice, which evaluates (i) whether any Hazardous Substances are present in any Unit or the Condominium or in the soil or surface or ground water adjacent to any such Condominium in quantities that would violate applicable Environmental Laws, (ii) whether any Hazardous Substance Activities are now or have previously occurred at a Unit, and (iv) whether activities presently being conducted at a Unit are in compliance with all applicable Environmental Laws. The environmental audit shall be based upon sampling of the soil, air, waters, materials, visual inspection, and such other methods as shall be appropriate. All sampling shall be conducted using accepted and scientifically valid technology and methodologies. The consultant shall prepare a written report detailing its findings and conclusions.

The Indemnitor agrees that in the event Association requests an audit and such audit indicates past or present Hazardous Substance Activity, the Association may, in its sole discretion, require that Indemnitor shall take all steps necessary to further define the nature of the Hazardous Substances, any risks related to or resulting therefrom, and possible remedial measures; and thereafter may also require that all violations of law with respect to Hazardous Substances be corrected by Indemnitor and that Indemnitor obtain all necessary environmental permits and approvals associated therewith.

Association shall have the right, but not the obligation, to enter the Unit or to take such other actions as it deems necessary or advisable to clean up, remove, decontaminate, detoxify, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Substances or Environmental Complaint following receipt of any notice from any person or entity (including, without limitation, the EPA) asserting the existence of any Hazardous Substances or an Environmental Complaint pertaining to a Unit, the Condominium or any part thereof which, if true, could result in any order, suit or other action against Indemnitor and/or which, in the sole opinion of Association, could create or impose liability on the Association. All reasonable costs and expenses incurred by Association in the exercise of any such rights shall be payable by Indemnitor upon demand.

Association shall have the right, in its sole discretion, to require Indemnitor to periodically (but not more frequently than annually unless an environmental complaint is then outstanding) perform (at Indemnitor's expense) an environmental audit and, if deemed necessary by Association, an environmental risk assessment, each of which must be satisfactory to Association, of the Unit, hazardous waste management practices and/or hazardous waste disposal sites used by Indemnitor, if any, and of compliance

with all permits, consent orders, licenses, approvals, permissions or any of the like required for the operation of the Unit or any business, process or activity thereon. Said audit and/or risk assessment must be by an environmental consultant satisfactory to Association. Should Indemnitor fail to perform said environmental audit or risk assessment within thirty (30) days of the Association's written request, Association shall have the right but not the obligation to retain an environmental consultant to perform said environmental audit or risk assessment. All costs and expenses incurred by Association in the exercise of such rights shall be secured by the Mortgage and shall be payable by Indemnitor upon demand.

22. Additional Rights of Mortgagees and Others.

22.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the Bylaws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

22.2 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Condominium Property or the affected mortgaged Unit;
- (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

22.3 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

23. Covenant Running with the Land. All provisions of this Declaration, the Articles, Bylaws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with



every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent Owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, Bylaws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into occupancy of any Unit, shall constitute and adoption and ratification of the provisions of this Declaration, and the Articles, Bylaws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

24. Disclaimer of Warranties. Developer hereby disclaims any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of the Condominium Property, except only those set forth in section 718.203 of the Act, to the extent applicable and to the extent that same have not expired by their terms. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters,, all incidental and consequential damages arising therefrom are hereby disclaimed.

Without limiting the generality of the foregoing, Developer further disclaims any liability to comply with, or upgrade any improvements and/or the Condominium Property as a result of, any changes or modifications to, or adoption of further federal, state or municipal laws, codes, ordinances regulations or rules hereafter applicable to the Condominium Property.

All Unit Owners, by virtue of acceptance of title to their respective units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

25. CPI. Whenever specific dollar amounts are recited in this Declaration (or in the Articles or Bylaws or rules and regulations), unless limited by law or by the specific text hereof (or thereof) or unless held to be unconscionable, such amounts will be increased from time to time by application of a nationally recognized consumer price index chosen by the Board, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.
26. Exculpation. Notwithstanding anything herein to the contrary, the representations, covenants, undertakings and agreements made in the Declaration by Developer are not made and intended as personal representations, covenants, undertakings and agreements by the Developer or for the purpose or with the intention of binding the

Developer personally but are made and intended for the purpose of binding the trust property. This Declaration is executed and delivered by the Developer executing the same not personally but as a trustee, and solely in the exercise of the powers conferred upon him as a trustee. No personal liability is assumed by nor shall at any time be asserted or enforceable against the Developer or beneficiary thereof on account of any representation, covenant, undertaking or agreement of the Developer contained in this Declaration, either expressed or implied. All such personal liability, if any, is expressly waived and released by the Unit Owners and by all persons claiming by, through or under the Unit Owners.

27. Additional Provisions.

- 27.1 Notices. All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.
- 27.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not reasonable shall conclusively establish the validity of such interpretation.
- 27.3 Mortgagees and Lienors. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 27.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those in this Declaration.

- 27.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of the vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 27.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 27.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, 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.
- 27.8 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 27.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of this occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 27.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents.

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

- 27.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 27.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 27.13 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent, specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Condominium Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
  - (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, County and/or any other jurisdiction or the prevention of tortuous activities; and
  - (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or 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 his Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically

waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer, which shall be fully protected hereby.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the 17 day of April, 2006.

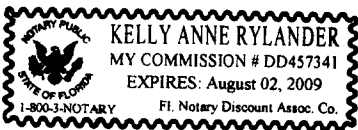
Witnessed by:

[Signature]  
Name: Robert S. Dea  
[Signature]  
Name: Karen Brant

B & B BUSINESS CENTER, LLC,  
a Florida limited liability company  
By: [Signature], its                     

STATE OF FLORIDA        )  
                                      ) ss:  
COUNTY OF Broward    )

The foregoing instrument was acknowledged before me this 17 day of April, 2006, by Andrew Behm, as President of B & B BUSINESS CENTER, LLC, a Florida limited liability company, who is personally known to me or has produced Florida Drivers License. as identification.



My Commission Expires:

[Signature]  
Name:                                       
Notary Public, State of Florida  
Commission No.:

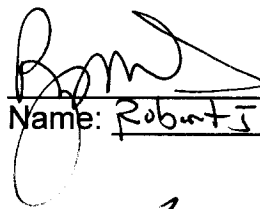
**JOINDER**

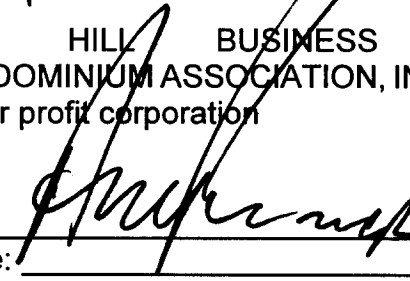
NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 17 day of April, 2006.

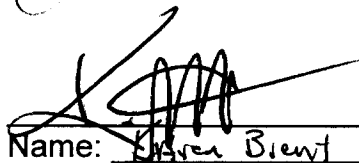
Witnessed by:

NOB HILL BUSINESS CENTER  
CONDOMINIUM ASSOCIATION, INC., a Florida  
not for profit corporation

  
Name: Robert J. Darr

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

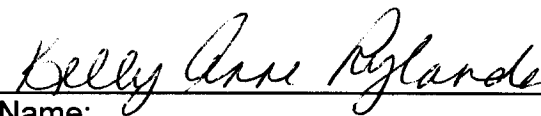
(Corporate Seal)

  
Name: Karen Brent

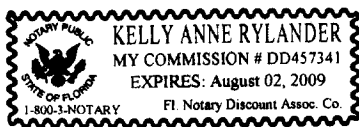
Address: \_\_\_\_\_

STATE OF FLORIDA       )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 17 day of April, 2006, by Andrew Behm, as President of NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He/she is personally known to me or has produced Florida Drivers License as identification.

  
Name: \_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:



**CONSENT OF MORTGAGEE**

**KNOW ALL MEN BY THESE PRESENTS:**

WHEREAS, TRANSCAPITAL BANK, a Florida banking corporation (hereinafter called the "Mortgagee"), is the owner and holder of that certain Mortgage and Security Agreement ("Mortgage"), dated August 23, 2005, and recorded September 28, 2005, in Official Records Book 40600, at Page 1119, of the Public Records of Broward County, Florida; and

WHEREAS, the Mortgage encumbers all of the Property being encumbered by this Declaration of Condominium for NOB HILL Business Center Condominium ("Declaration") recorded herewith;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration received, the Mortgagee hereby consents to the Declaration.

IN WITNESS WHEREOF, TRANSCAPITAL BANK, a Florida banking corporation, has caused these presents to be signed by its proper officer and its corporate seal to be affixed this 25th day of April, 2006.

Witnessed by:

Veronica Abreu  
Name: Veronica Abreu

Sherrie M. Selui  
Name: Sherrie M. Selui

TRANSCAPITAL BANK

By: [Signature]  
Name: William E. Himes  
Title: VP

Address: 2100 E. Hallandale Beach Blvd.  
Hallandale, FL 33009

(Corporate Seal)

STATE OF FLORIDA )  
COUNTY OF Broward ) ss:

The foregoing instrument was acknowledged before me this 25th day of April, 2006, by William E. Himes, as Exec. V.P. of TRANSCAPITAL BANK, on behalf of the Mortgagee. (He/she is personally known to me or has produced as identification.

Veronica Abreu  
Name: Veronica Abreu  
Notary Public, State of Florida

My Commission Expires:

Veronica Abreu  
MY COMMISSION # DD166640 EXPIRES  
November 19, 2006  
NOTED THRU TROY FAIN INSURANCE, INC.

**SCHEDULE OF EXHIBITS TO  
DECLARATION OF CONDOMINIUM  
FOR  
NOB HILL BUSINESS CENTER CONDOMINIUM**

Exhibit "A"	Legal Description of the Land
Exhibit "B"	Survey of the Land, a graphic description of the Improvements located thereon, including the Building in which the Units are located, and a plot plan thereof.
Exhibit "C"	Percentage Interest in the Common Elements and Common Surplus, and the Percentage Share of the Common Expenses for each Unit, and number of Votes allocated to each Unit.
Exhibit "D"	Articles of Incorporation for NOB HILL Business Center Condominium Association, Inc., a Florida not for profit corporation.
Exhibit "E"	Bylaws for NOB HILL Business Center Condominium Association, Inc., a Florida not for profit corporation.



## **EXHIBIT "A"**

Parcel B, SUNRISE INDUSTRIAL PARK, PARCELS 9 and 25, according to the Plat thereof, as recorded in Plat Book 128, Page 124, of the Public Records of Broward County, Florida; LESS and EXCEPT the land conveyed to Broward County, as described in Deed recorded in O.R. Book 19078, Page 42, of said Public Records.

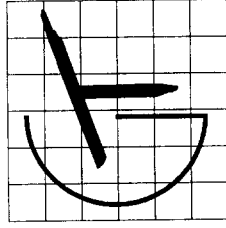
NOB HILL BUSINESS CENTER  
CONDOMINIUM  
UNITS 5349-5399

THE UNDERSIGNED BEING A PROFESSIONAL SURVEYOR MAPPER AUTHORIZED TO PRACTICE IN THE STATE OF FLORIDA, HEREBY CERTIFIES THAT THE CONSTRUCTION OF THE IMPROVEMENTS OF NOB HILL BUSINESS CENTER CONDOMINIUM DESCRIBED IN THIS SURVEY, PLOT PLAN AND GRAPHIC DESCRIPTION OF IMPROVEMENTS ON SHEETS 1 THROUGH -- IS SUBSTANTIALLY COMPLETE SO THAT SUCH MATERIAL TOGETHER WITH THE PROVISIONS OF THE DECLARATION OF CONDOMINIUM OF NOB HILL BUSINESS CENTER CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK --, PAGE -- OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND ANY AMENDMENTS THERETO DESCRIBING THE CONDOMINIUM, IS AN ACCURATE REPRESENTATION OF THE IDENTIFICATION, LOCATION, AND DIMENSIONS OF EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.

THE UNDERSIGNED ALSO CERTIFIES THAT THIS BOUNDARY SURVEY IS IN COMPLIANCE WITH THE "MINIMUM TECHNICAL STANDARDS" PROMULGATED PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

UNLESS IT BEARS THE SIGNATURE AND RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER, THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATION PURPOSES ONLY AND IS NOT VALID

DATE	DESCRIPTION
01-24-06	SURVEYORS' CERTIFICATE
	SCALE: NOT TO SCALE
	PAGE 1 OF 4

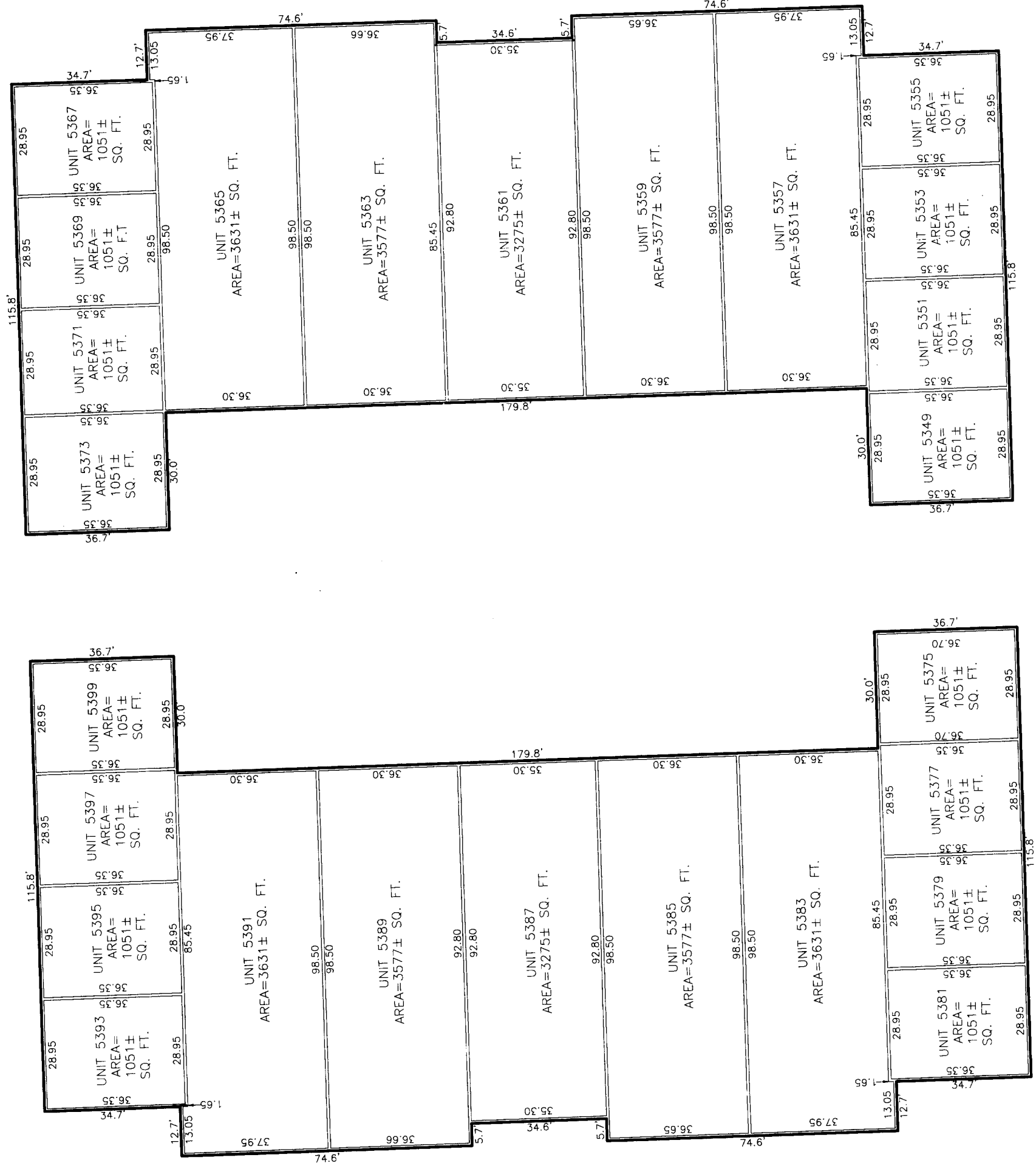


**GT SURVEYING SERVICES, INC.**  
1860 OLD OKEECHOBEE ROAD  
SUITE NO. 501  
WEST PALM BEACH  
FLORIDA 33409  
OFFICE: 561-688-0553  
FAX: 561-688-9579  
E-MAIL: gt@gtsurveyinc.com

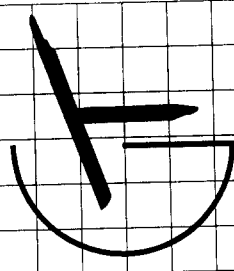
SIGNED:   
GINO FURLAN, SURVEYOR AND MAPPER  
FLORIDA LICENSE NO.: 5044

FLORIDA CERTIFICATE OF AUTHORIZATION NO.: 6026

NOB HILL BUSINESS CENTER  
CONDOMINIUM  
PROPOSED FLOOR PLAN  
UNITS NO. 5349-5399



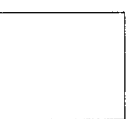
DATE	DESCRIPTION
01-24-06	PROPOSED FLOOR PLAN
	SCALE: 1"=30'
	PAGE 4 OF 4



**GT SURVEYING  
SERVICES, INC.**

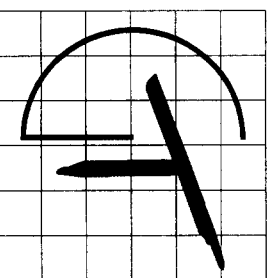
1860 OLD OKEECHOBEE ROAD  
SUITE NO. 501  
WEST PALM BEACH  
FLORIDA 33409  
OFFICE: 561-688-0553  
FAX: 561-688-9579  
E-MAIL: gt@gtsurveyinc.com

# NOB HILL BUSINESS CENTER CONDOMINIUM PROPOSED PLOT PLANS UNITS NO. 5349-5399

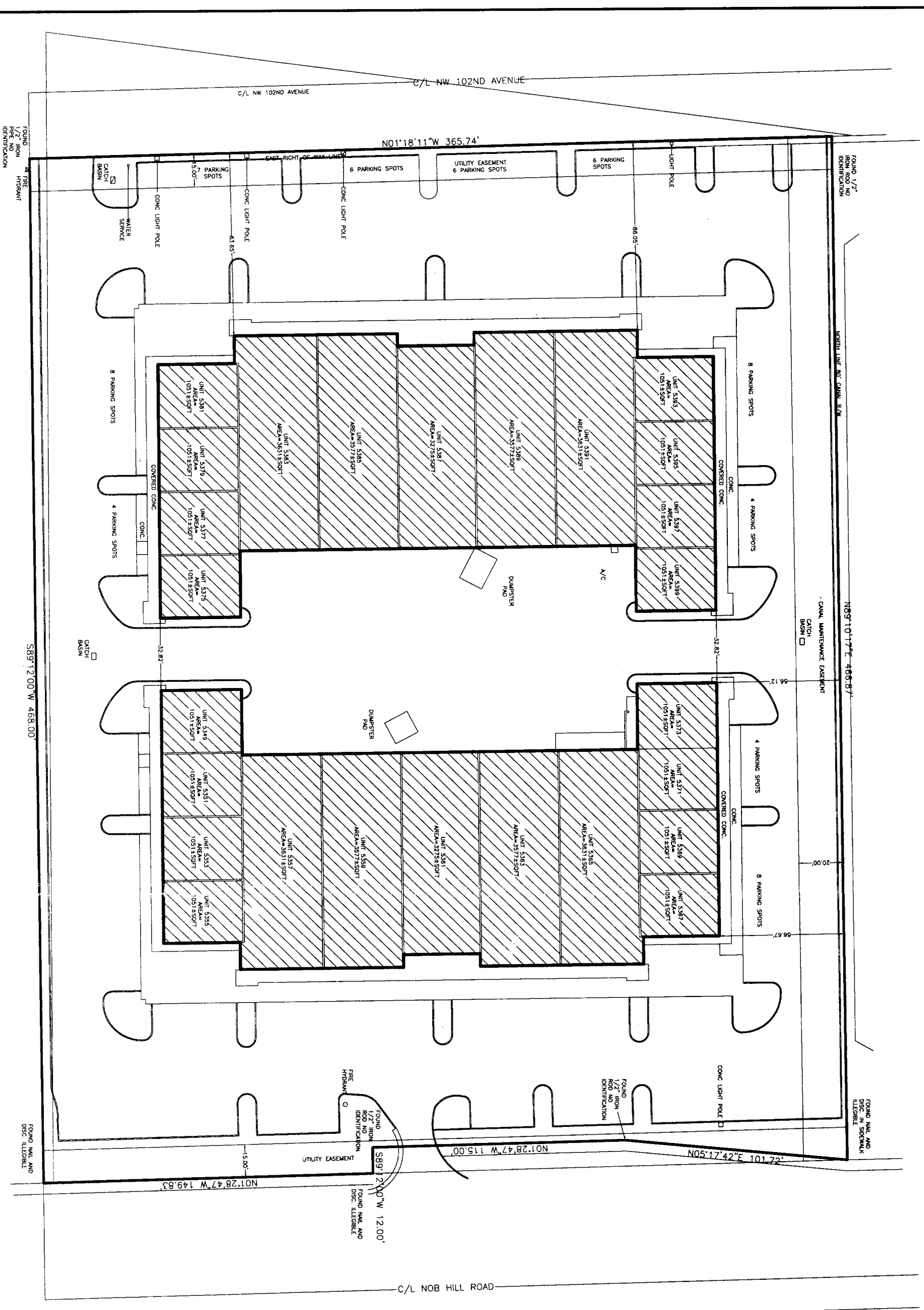


CLEAR AREA INDICATES COMMON  
AND LIMITED COMMON ELEMENTS

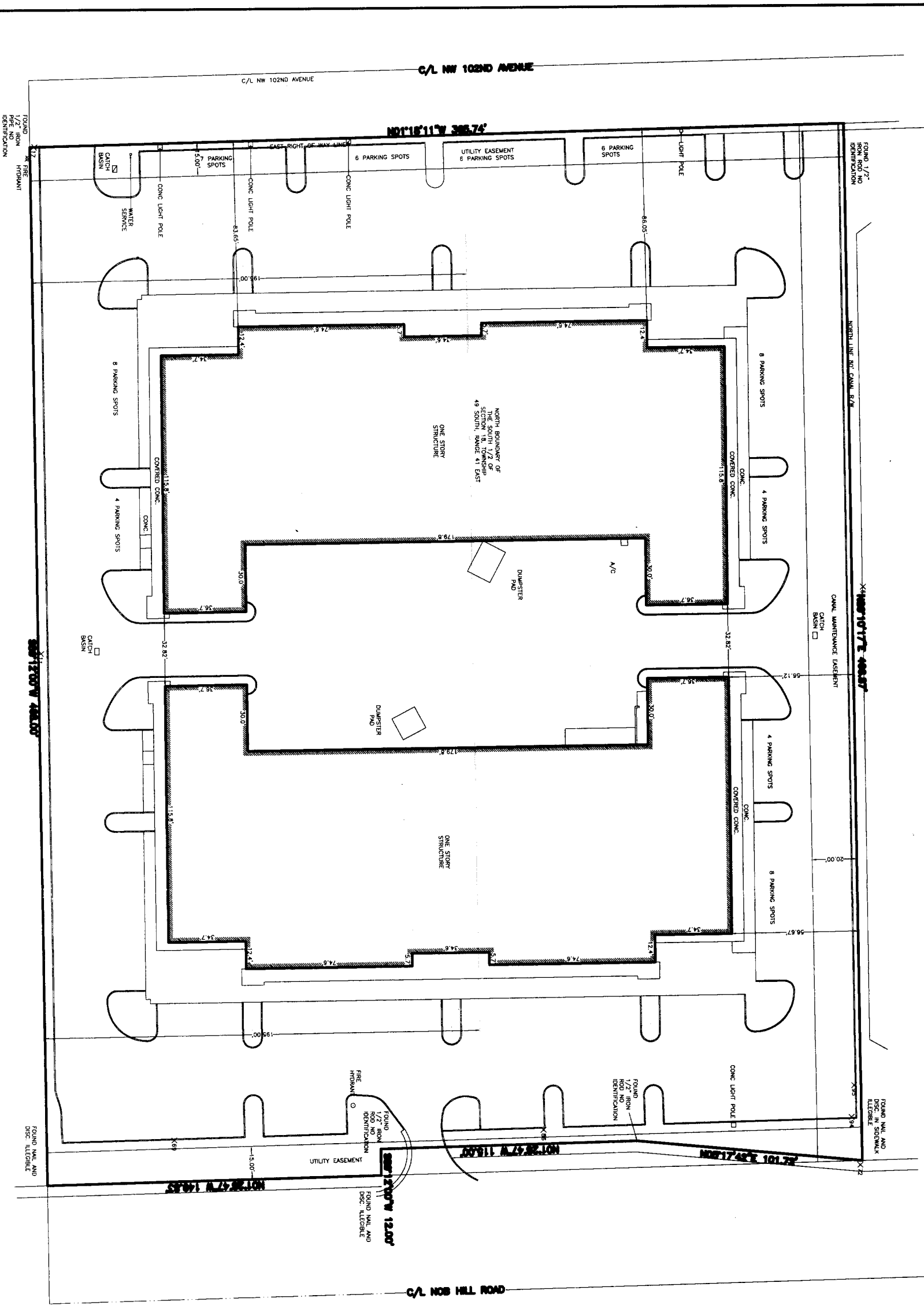
DATE	DESCRIPTION
01-24-06	PLOT PLAN AND ELEMENTS
	SCALE: 1"=50'
	PAGE 3 OF 4



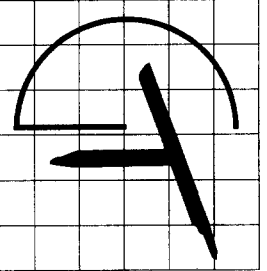
**GT SURVEYING  
SERVICES, INC.**  
1860 OLD OKEECHOBEE ROAD  
SUITE NO. 501  
WEST PALM BEACH  
FLORIDA 33409  
OFFICE: 561-688-0553  
FAX: 561-688-9579  
E-MAIL: gt@gtsurveyinc.com



# NOB HILL BUSINESS CENTER CONDOMINIUM BOUNDARY SURVEY



DATE	DESCRIPTION
08-18-05	BOUNDARY SURVEY
	SCALE: 1"=50'
	PAGE 2 OF 4



**GT SURVEYING  
SERVICES, INC.**

1860 OLD OKEECHOBEE ROAD  
SUITE NO. 501  
WEST PALM BEACH  
FLORIDA 33409  
OFFICE: 561-688-0553  
FAX: 561-688-9579  
E-MAIL: gt@gtsurveyinc.com

NOB HILL BUSINESS CENTER, A CONDOMINIUM  
PERCENTAGE INTEREST IN COMMON ELEMENTS

TOTAL OPERATING EXPENSES: (from Budget pg)					\$ 66,375.00
UNIT #	UNIT AREA	UNIT VOTE ALLOCATION	Total Building Unit Area	% OWNERSHIP	Unit Monthly Assessment
5349	1,051	1	52,198	2.0135%	\$ 111.37
5351	1,051	1	52,198	2.0135%	\$ 111.37
5353	1,051	1	52,198	2.0135%	\$ 111.37
5355	1,051	1	52,198	2.0135%	\$ 111.37
5357	3,631	3	52,198	6.9562%	\$ 384.77
5359	3,577	3	52,198	6.8528%	\$ 379.04
5361	3,275	3	52,198	6.2742%	\$ 347.04
5363	3,577	3	52,198	6.8528%	\$ 379.04
5365	3,631	3	52,198	6.9562%	\$ 384.77
5367	1,051	1	52,198	2.0135%	\$ 111.37
5369	1,051	1	52,198	2.0135%	\$ 111.37
5371	1,051	1	52,198	2.0135%	\$ 111.37
5373	1,051	1	52,198	2.0135%	\$ 111.37
5375	1,051	1	52,198	2.0135%	\$ 111.37
5377	1,051	1	52,198	2.0135%	\$ 111.37
5379	1,051	1	52,198	2.0135%	\$ 111.37
5381	1,051	1	52,198	2.0135%	\$ 111.37
5383	3,631	3	52,198	6.9562%	\$ 384.77
5385	3,577	3	52,198	6.8528%	\$ 379.04
5387	3,275	3	52,198	6.2742%	\$ 347.04
5389	3,577	3	52,198	6.8528%	\$ 379.04
5391	3,631	3	52,198	6.9562%	\$ 384.77
5393	1,051	1	52,198	2.0135%	\$ 111.37
5395	1,051	1	52,198	2.0135%	\$ 111.37
5397	1,051	1	52,198	2.0135%	\$ 111.37
5399	1,051	1	52,198	2.0135%	\$ 111.37
TOTALS	52,198			100.0000%	\$ 5,531.25
ANNUAL TOTAL					\$ 66,375.00

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**ARTICLES OF INCORPORATION  
FOR  
NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC.  
a Florida not for profit corporation**

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

**ARTICLE I**

**NAME**

The name of the corporation shall be NOB HILL BUSINESS CENTER CODOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles," and the Bylaws of the Association as the "Bylaws."

**ARTICLE II**

**PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act"), as it exists on the date hereof for the operation of a condominium (the "Condominium"). It is intended that the Condominium will consist of eight (8) warehouse/office units ("Units"); provided, however, such number may be changed from time to time by the Board of Directors.

**ARTICLE III**

**DEFINITIONS**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the DECLARATION OF CONDOMINIUM FOR NOB HILL BUSINESS CENTER CONDOMINIUM (the "Declaration") to be recorded in the Public Records of Broward County, Florida, and/or the Bylaws, unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE IV**

**POWERS**

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

- 4.1 General. The Association shall have all of the common-law and statutory powers of a not for profit corporation under the laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the Bylaws, or the Act.
- 4.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the Bylaws and the Declaration, and all of the powers and duties reasonably necessary to operate and administer the Condominium, pursuant to the Declaration and as more particularly described in the Bylaws and these Articles, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against "Members" of the Association (as defined in Article 5 hereof) as Unit Owners (the "Owners" or "Unit Owners"), and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property.
  - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.
  - (d) To purchase insurance upon the "Condominium Property" (as defined in the Declaration) and insurance for the protection of the Association, its officers, Board of Directors and Unit Owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners.
  - (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
  - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, and the rules and regulations for the use of the Condominium Property and "Association Property" (as hereinafter defined in Article 4.3 hereof), subject, however, to the limitation regarding assessing Units owned by "Developer" (as defined in the Declaration) for fees and expenses relating in any way to claims or potential claims against Developer as set forth in the Declaration and/or Bylaws.
  - (h) If applicable, to contract for the management and maintenance of the Condominium Property and Association Property, and to authorize a management agent (who may be an affiliate of the Developer) to assist the



Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association, including its Board of Directors and all officers, shall, however, retain at all times the powers, and duties granted by the Condominium Act, and the Declaration, including, but not limited to the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

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

- 4.3 Association Property. All funds and the titles to all properties acquired by the Association and their proceeds (hereinafter collectively referred to as "Association Property") shall be held for the benefit and use of the Members in accordance with the provisions of the Act, the Declaration, these Articles and the Bylaws. Association Property shall be subject to reasonable regulation by the Board of Directors.
- 4.4 Distribution of Income; Dissolution. The Association shall make no distribution of income to its Members, Directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency, except in the event of a termination of the Condominium.
- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration and the Bylaws.

## ARTICLE V

### MEMBERS

- 5.1 Membership. The members of the Association ("Members") shall consist of the Developer and all of the record title Owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were Members, at the time of such termination, and their successors and assigns, as further described in the Declaration.
- 5.2 Assignment. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be the number of votes allocated each Unit as set forth in Exhibit "C" of the Declaration, which votes shall be exercised or cast in the manner provided by the

Declaration and Bylaws. Any person or entity owning more than one Unit shall be entitled to the applicable vote(s) for each Unit owned.

- 5.4 Meetings. The Bylaws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

**ARTICLE VI**

**TERM OF EXISTENCE**

The Association shall have perpetual existence.

**ARTICLE VII**

**INCORPORATOR**

The name and address of the Incorporator to these Articles is as follows:

ROBERT J. DORN, P.A.  
7815 W. Commercial Blvd., Tamarac, FL 33351

**ARTICLE VIII**

**OFFICERS**

Subject to the direction of the Board of Directors (described in Article 9 below), the affairs of the Association shall be administered by the officers holding the offices designated in the Bylaws. The officers shall be elected by the Board at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board. The Bylaws may provide for the removal from office of officers, for filling vacancies and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the Board are as follows:

President:  
Andrew Behm  
7801 W. Commercial Blvd., Tamarac, FL 33351

Secretary:  
Arthur Behm  
7801 W. Commercial Blvd., Tamarac, FL 33351

Treasurer:  
Greg Berger  
7801 W. Commercial Blvd., Tamarac, FL 33351

**ARTICLE IX**

**BOARD OF DIRECTORS**

- 9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board (the "Board" or "Board of Directors") consisting of the number of Board Members determined in the manner provided by the Bylaws, but which shall consist of not less than three (3), nor more than nine (9) Board Members. Members of the Board of Directors need not be Members of the Association or residents of Units in the Condominium.
- 9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required and except as provided in the Declaration.
- 9.3 Election; Removal. Board Members of the Association shall be elected at the annual meeting of the Members in the manner determined by and subject to the qualifications set forth in the Bylaws. Members of the Board may be removed and vacancies on the Board shall be filled in the manner provided in the Bylaws.
- 9.4 First Directors. The names of the members of the first Board who shall hold office until their successors are elected and have qualified, as provided in the Bylaws are as follows:

Andrew Behm  
Greg Berger  
Arthur Behm

**ARTICLE X**

**INDEMNIFICATION**

- 10.1 Indemnity. The Association shall indemnify any Board Member or officer, or their agents, who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such party is or was a director, employee, officer, or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by such party in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that such party did not act in good faith or in a manner such party

reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceeding, that such party had reasonable cause to believe that his or her conduct was unlawful, and (b) such court also determines specifically that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

- 10.2 Expenses. To the extent that a Member of the Board, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 10.3 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the affected Member of the Board, officer, employee or agent to repay such amount unless it shall be ultimately determined that he is entitled to be indemnified by the Association as authorized in this Article X.
- 10.4 Miscellaneous. The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a Member of the Board, officer, employee or agent, and shall inure to the benefit of the heirs and personal representatives of such person.
- 10.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Member of the Board, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a Member of the Board, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such party and insured by such party in any such capacity, or arising out of said person's status as such, whether or not the Association would have the power to indemnify said person against such liability under the provisions of this Article.
- 10.6 Amendment. Anything to the contrary herein notwithstanding the provisions of this Article X may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

ARTICLE XIBYLAWS

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

ARTICLE XIIAMENDMENTS

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

- 12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.
- 12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-third (1/3) of the Members of the Association. Members of the Board and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:
  - (a) at any time, by not less than a majority of the votes of all of the Members of the Association represented at a meeting at which a quorum thereof has been attained and by not less than sixty-five percent (65%) of the entire Board of Directors; or
  - (b) after control of the Association is turned over to Unit Owners other than the Developer, by not less than sixty-five percent (65%) of the votes of all of the Members of the Association represented at a meeting at which a quorum has been attained; or
  - (c) after control of the Association is turned over to Unit Owners other than the Developer, by not less than sixty-five percent (65%) of the entire Board of Directors; or
  - (d) before control of the Association is turned over to the Unit Owners other than the Developer, by not less than sixty-five percent (65%) the entire Board of Directors.
- 12.3 Limitation. No amendment shall make changes in the qualifications for membership nor in the voting rights or property rights of Members, nor any changes in Sections 5.1 and 5.2 of the Declaration, without the approval in writing of all Members and the joinder of all mortgagees. No amendment shall be made that is in conflict with

the Declaration or the Bylaws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer or its Affiliate, unless Developer or its Affiliate shall join in the execution of the amendment. No amendment to this paragraph 12.3 shall be effective.

- 12.4 Developer. Developer has the absolute right, without the joinder of the Association or any other party, to amend these Articles (consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone) without any consent of Members.
- 12.5 Recording. A copy of each amendment shall be filed with the Department of State pursuant to the provisions of applicable Florida law, and a copy certified by the Department of State shall be recorded in the Public Records of Broward County, Florida.

**ARTICLE XIII**

**PRINCIPAL ADDRESS OF ASSOCIATION**

The principal office of this corporation shall be at 7801 W. Commercial Blvd., Tamarac, FL 33351, or such other place as may subsequently be designated by the Board of Directors.

**ARTICLE XIV**

**CONVEYANCE**

The Association shall accept any and all deeds of conveyance delivered to it by the Developer.

**ARTICLE XV**

**REGISTERED AGENT**

The name and address of the initial registered agent of the Association shall be:

ROBERT J. DORN, P.A.  
7815 W. Commercial Blvd., Tamarac, FL 33351

IN WITNESS WHEREOF, the Incorporator has affixed his signature as of this 17 day of April, 2006.

ROBERT J. DORN, P.A.

BY: [Signature]  
ROBERT J. DORN, ESQ.

ACCEPTANCE OF APPOINTMENT  
OF  
REGISTERED AGENT

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION IN THESE ARTICLES OF INCORPORATION, ROBERT J. DORN, P.A., HEREBY AGREES TO ACT IN THIS CAPACITY, AND FURTHER AGREES TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF ITS DUTIES.

ROBERT J. DORN, P.A.

By: 

Name: ROBERT J. DORN, ESQ.

DATE: Apr. 26, 2006

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**BYLAWS OF  
NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC.  
a Florida corporation not for profit  
organized under the laws of the State of Florida**

**Article 1  
GENERAL**

1.1 **The Name.** The name of the Corporation shall be NOB HILL BUSINESS CENTER CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Association."

1.2 **Principal Office.** The principal office of the Corporation shall be at 7801 W. Commercial Blvd., Tamarac, FL 33351 or at such other place as may be subsequently designated by the Board of Directors.

1.3 **Identity.** In addition to these Bylaws being the Bylaws of the Association, these bylaws are established pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes ("Act") for the purpose of administering, operating and managing Nob Hill Business Center Condominium (the "Condominium").

1.4 **Definitions.** As used herein, these Bylaws shall be referred to as the "Bylaws," the Articles of Incorporation of the Association as the "Articles," the term "Corporation" shall be the equivalent of "Association," "Developer" shall be equivalent to the "Declarant" as both may be used and interchanged throughout these Bylaws, the Articles, and the Declaration. All other words as used herein shall have the same definitions as attributed to them in the Declaration of Condominium of Nob Hill Business Center Condominium ("Declaration"). Any terms not defined in the Declaration shall have those definitions established by the Act.

**Article 2  
MEMBERSHIP AND VOTING PROVISIONS**

2.1 **Membership.** Membership in this Association shall be as specified in the Articles and the Declaration and shall be limited to Unit Owners in the Condominium. Transfer of Unit ownership, either voluntarily or by operation of law, shall automatically terminate membership, and the transferee shall automatically become a Member of this Association. If Unit ownership is vested in more than one person, all of the persons owning a Unit shall be eligible to hold office, attend meetings, etc.; but, as hereinafter indicated, the vote of a Unit shall be cast by the Voting Member. If Unit ownership is vested in a corporation, the corporation may designate an individual officer or employee as its Voting Member. Developer, or its assignee, nominee, designee or successor, as a Unit Owner of unsold Units, shall be deemed a Unit Owner and Member of this Association.

2.2 **Voting.** In any meeting of members, the Unit Owner(s) of each Unit, as described in the Declaration, shall be entitled to the number of votes allocated to each Unit as set forth in Exhibit "C" of the Declaration. If a Unit Owner owns more than one Unit, he shall be entitled to the number of votes which correspond to each particular Unit owned. The vote of a Unit shall not be divisible.

- 1 -

*Bylaws of Nob Hill Business Center Condominium Association, Inc.*



Unless otherwise set forth herein or in the Act, matters shall be voted on by the membership of the Association and shall be determined by a vote of a majority of the voting interests ("Voting Interests") to be cast by the Members in attendance at any meeting having a quorum.

2.3 **Quorum.** Unless otherwise provided in these Bylaws, the presence, in person, or by proxy, of 33-1/3 of the Voting Interests of the Association constitutes a quorum. Voting rights of no Unit Owner may be suspended pursuant to the provisions of the Declaration of these bylaws for any violation of same, pursuant to Section 718.106, Florida Statutes. A quorum is not required for elections conducted by the Association, pursuant to Section 718.112(2)(d), Florida Statutes.

2.4 **Proxies.** Except where otherwise provided by law, in the Declaration, the Articles of Incorporation or in these Bylaws (including, but not limited to Section 4.2 hereof), votes may be cast in person or by proxy. All proxies shall be in writing, signed by the person entitled to vote, shall be filed with the Secretary of the Association prior to, or at, the meeting at which they are to be used, and shall be effective only for the specific meeting for which they were originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the Unit Owner executing it. Where a Unit is owned jointly by a husband and wife, and they have not designated one of themselves as a Voting Member, a proxy must be signed by both in order to designate a third person as proxy. Limited proxies and general proxies may be used to establish a quorum. Limited proxies must be used for votes taken to: (i) waive or reduce reserves; (ii) waive financial statement requirements; (iii) amend the Declaration; (iv) amend the Articles of Incorporation or Bylaws; and (v) for any other matter for which the Florida Condominium Act requires or permits a vote of the Unit Owners. (No proxy, limited or general, shall be used in the election of Board members). General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. (Notwithstanding the provision of this subsection 2.4, Unit Owners may vote in person at Unit Owner meetings.) Notwithstanding the foregoing, in accordance Rule 61B-23.0026(2)(d), Florida Administrative Code, when both the Developer and Unit Owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, only Unit Owners other than the Developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by Unit Owners other than the Developer.

2.5 **Designation of Voting Member.** If a Unit is owned by one person, his right to vote shall be established by the record title to the Unit. If a Unit is owned by more than one person, the person entitled to cast the Unit's vote shall be designated in a certificate to be filed with the Secretary, signed by all of the record Unit Owners of the Unit. If a Unit is owned by a corporation, it shall designate the officer, employee or agent entitled to cast the Unit's vote by executing a certificate to be filed with the Secretary of the Association, signed by its President or Vice President and attested to by its Secretary or Assistant Secretary. The person designated in such certificate shall be known as the Voting Member. If, for a Unit owned by more than one person or by a corporation, such certificate is not on file with the Secretary of the Association, the vote of the Unit shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the

person entitled to cast the vote for the Unit, except if said Unit is owned jointly by a husband and wife. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or until a change occurs in the ownership of the Unit. If a Unit is owned jointly by a husband and wife, the following provisions are applicable:

- A. They may, but they shall not be required to, designate a Voting Member;
- B. If they do not designate a Voting Member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting;
- C. Where they do not designate a Voting Member, and only one is present at a meeting, the person present may cast the Unit's vote.

### Article 3 MEMBERSHIP AND MEETINGS

3.1 **Place.** All meetings of Members shall be held at the principal office of the Association or at such other place and at such time as shall be designated by the Board and stated in the notice of meeting.

3.2 **Notice.** It shall be the duty of the Secretary to send by regular mail or deliver a notice of each annual or special meeting to each Unit Owner, and to post a copy of said notice in a conspicuous place on the property, at least fourteen (14) continuous days but not more than thirty-five (35) days prior to such meeting pursuant to Section 718.112(2)(d)(2), Florida Statutes. Notwithstanding the foregoing, not less than sixty (60) days before a scheduled election, the Secretary shall mail or deliver to each Unit Owner a first notice of the date of election in accordance with Section 718.112(2)(d)(3), Florida Statutes, and as detailed in Section 4.2 herein. Together with the notice to be provided in accordance with the first sentence of this Section 3.2, the Secretary shall mail or deliver a second notice of election. Notice of any meeting shall list the time, place and purpose thereof and shall incorporate an identification of agenda items. Upon notice to the Unit Owners, the Board shall, by duly adopted rule, designate a specific location on the Condominium property upon which all notices of Unit Owner meetings shall be posted. Unless a Unit Owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each Unit Owner. All notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association. Proof of posting, delivery or mailing of the notice (if required) shall be given by the affidavit of the person serving the notice or by a U.S. post office certificate of mailing and such proof shall be retained in the official records of the Association as proof of such mailing. Notice of specific meetings may be waived before or after the meeting.

3.3 **Annual Meeting.** There shall be an annual meeting of the Unit Owners for the purpose of electing directors and transacting any other authorized business shall be held at 8:00 p.m., Eastern Standard Time, on the first Tuesday in December of each year, or at such other time as shall be selected by the Board of Directors. At the annual meeting, the Members shall elect a Board by

plurality vote (cumulative voting prohibited), and shall transact such other business as may be properly brought before the meeting.

3.4 **Special Meetings.** Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the President, or shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors or at the request, in writing, of Voting Members representing forty percent (40%) of the Voting Interests. Such requests shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting.

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

3.6 **Adjourned Meeting.** If any meeting of Members cannot be organized because a quorum is not present, either in person or by proxy, the meeting shall be adjourned from time to time until a quorum is present.

3.7 **Order of Business.** The order of business at annual Members' meetings and as far as practical at other Members' meetings, shall be:

- A. Collection of election ballots (if applicable);
- B. Calling to order by President or Chairman;
- C. Appointment of chairman of the meeting by the President or, in his absence, by a majority of the Board of Directors. The chairman may be the attorney for the Association or a representative of the Association's management company who will conduct the meeting without vote;
- D. Calling of the roll and certifying of proxies;
- E. Proof of notice of the meeting or waiver of notice;
- F. Reading and disposal of any unapproved minutes;
- G. Reports of officers;

- H. Reports of committees;
- I. Appointment of inspectors of election;
- J. Determination of number of directors;
- K. Election of directors;
- L. Unfinished business;
- M. New business; and
- N. Adjournment.

3.8 **Minutes of Meeting.** The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representative and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

#### Article 4 DIRECTORS

4.1 **Membership.** The affairs of the Association shall be managed by a Board of not less than three (3), nor more than nine (9) Directors.

The exact number of Directors will be determined from time to time upon majority vote of the membership. The Board may not appoint other officers without the majority vote of the membership. All Directors shall be Unit Owners, or, in the case of partnership Unit Owners, shall be members or employees of such partnerships; or, in the case of corporate Unit Owners, shall be directors, officers, stockholders or employees of such Corporation; or, in the case of fiduciary Unit Owners, shall be the fiduciaries or their beneficiaries, or directors, officers, stockholders or employees of a corporate fiduciary, or their corporate beneficiary, or partners or employees of a partnership fiduciary. No Director shall continue to serve on the Board after he ceases to be a Unit Owner or an interested party in a Unit Owner as specified in the preceding sentence. The above provisions of this subsection 4.1 and subsection 4.2 shall not apply to Directors elected by the Developer in accordance with subsection 4.15 hereof.

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

A. Election of directors shall be held at the annual Members' meeting, except as provided herein to the contrary.

B. The Board of Directors shall be elected by written ballot or voting machine. Proxies shall not be used in the election of the Board of Directors, either in general elections or

elections to fill vacancies caused by recall, resignation, or otherwise; however, if a majority or more of the existing Board is recalled at the meeting, proxies may be used for the election to fill these vacancies, in accordance with Rule 61B-0027(3)(e)2, Florida Administrative Code. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible votes must cast a ballot in order to have a valid election of members of the Board of administration. No Unit Owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. Notwithstanding the foregoing, in accordance Rule 61B-23.0026(2)(d), Florida Administrative Code, when both the Developer and Unit Owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, Florida Administrative Code, only Unit Owners other than the Developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by Unit Owners other than the Developer.

C. Written notice of the scheduled election shall be mailed to each Member at his last known address as it appears on the books of the Association. The first notice of the date of the election shall be mailed to each Member not less than sixty (60) days before the scheduled election. The first notice must contain the name and correct mailing address of the Association.

D. Any Unit Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Association not less than forty (40) days before the scheduled election. Written notice shall be effective when received by the Association.

E. Upon the timely request of the candidate as set forth in this subparagraph, the Association shall include, with the second notice of election described in Paragraph G below, a copy of an information sheet which may describe the candidate's background, education and qualifications as well as any other factors deemed relevant by the candidate. The information sheet shall not exceed one side of a sheet which shall be no larger than eight and one-half (8-1/2) by eleven (11) inches. Any candidate desiring the Association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the Association not less than thirty-five (35) days before the election. The failure of the Association to mail or personally deliver a copy of a timely delivered information sheet of each eligible candidate to the eligible voters shall render any election held null and void. The Association shall not edit, alter or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the Association. The Association has no liability for the contents of the information sheets prepared by the candidates.

F. The Association shall mail or deliver to the eligible voters at the addresses listed in the official records of the Association a second notice of the election, together with a ballot which shall list all candidates and any information sheets timely submitted by the candidates. The second notice and accompanying documents shall not contain any communication by the Board which endorses, disapproves or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter and the Unit or Unit numbers being voted and shall contain a signature space for the voter. Once the ballot is completed, the voter shall place the completed ballot in the

inner smaller envelope and seal that envelope. The inner envelope shall then be placed within the larger outer envelope and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for his signature. The outer envelope shall either be mailed or hand delivered to the Association. Upon receipt by the Association, no ballot may be rescinded or changed.

G. The written ballot shall indicate in alphabetical order by surname, each and every Unit Owner or other eligible person who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. No ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. No ballot shall contain a section providing for the signature of a voter. All ballot forms shall be uniform in color and appearance. Envelopes containing ballots received by the Association shall be retained and collected by the Association and shall not be opened except in the manner hereinafter provided and in accordance with the Act

H. Any envelopes containing ballots not prevalidated as provided in subsection 4.2(I) below shall be collected by the Association and shall be transported to the location of the election. Either the Board or persons appointed by the Board shall validate and process the ballots. The Association shall have available additional blank ballots at the meeting for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope. At the meeting, as the first order of business, ballots not yet cast shall be collected. Next, the signatures and Unit identifications on the outer envelopes shall be checked against the list of qualified voters, unless previously verified as set forth in subsection 4.2(I) below. Any exterior envelope not signed by the eligible voter shall be marked "disregarded" and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any Unit Owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed in a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. Inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of any Unit Owners. Any inner envelopes containing more than one ballot shall be marked "disregarded" and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained as part of the official records of the Association. Board members whose terms expire and who are not reelected shall relinquish their Board positions, and those positions shall be assumed by the duly elected Board members.

I. The Association may verify outer envelope information in advance of the meeting by following the procedure set forth in Section 718.112(2)(d)(3), Florida Statutes, and Rule 61B-23.001, Florida Administrative Code.

J. The Board shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the Board. However, the Board may create or

appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the Board.

K. The provisions of this subsection 4.2(B) through 4.2(J), inclusive, are in accordance with Section 718.112(2)(d)(3), Florida Statutes, and Rule 61B-23.0021, Florida Administrative Code. In the event such statute or rule is repealed, the Board shall determine the procedure for elections of directors. In the event said statute or rule is amended, these Bylaws shall be deemed automatically amended to comply with any such changes.

L. The provisions of this subsection 4.2 may be amended by a sixty-five percent (65%) vote of the total Voting Interests to provide for different voting and election procedures, provided that the proposed amendments comply with Florida law, as amended from time to time. Notwithstanding the foregoing, pursuant to Section 718.112(2)(d), Florida Statutes, the Association may, by affirmative vote of a majority of the total voting interests, provide for alternative voting or election procedures, including the use of proxies.

M. Notwithstanding anything contained herein to the contrary, balloting is not necessary to fill any vacancy unless there are two (2) or more eligible candidates for that vacancy. In such case, not later than the date of the scheduled election, the Association shall call and hold a meeting of the membership to announce the names of the new Board members, or shall notify the Unit Owners that one or more Board member positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

N. At any duly convened regular or special meeting of Members at which a quorum is present, any one or more of the directors may be removed, with or without cause, by the affirmative vote of Voting Members casting not less than a majority of the total votes of the Association. A successor may then and there be elected to fill any vacancies created. Should the membership fail to elect a successor, the Board may fill the vacancy in the manner provided below. Notwithstanding the foregoing, as provided in Rule 61B-23.0026, Florida Administrative Code, directors appointed by the Developer may only be removed by the Developer and directors appointed by the Unit Owners may only be removed by the Unit Owners.

O. Except as to vacancies resulting from removal of Directors by Members, if the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification, or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor who shall hold office for the balance of the unexpired term of office. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board.

P. Any Director may resign at any time by sending a written notice of such resignation to the office of the Association, addressed to the President or Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the organizational meeting of any newly elected Board, more than three (3) consecutive absences unless excused by resolution of the Board shall automatically constitute a resignation from the Board. The transfer by a Director of title to his parcel shall, effective as of the date of title transfer, automatically constitute a resignation from the Board.

Q. Until a majority of the Directors are elected by the Members other than the Developer, however, neither the first directors of the Association nor any directors replacing them nor any directors named by the Developer shall be subject to removal by members other than the Developer. The first directors and directors replacing them may be removed by the Developer.

4.3 **Term.** Vacancies on the Board caused by the expiration of a Director's term shall be filled by electing new Board members. The term of each director's service shall extend until the next annual meeting of the Members and subsequently until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided, and provided that the first Board shall serve in accordance with subsection 4.15 hereinafter.

4.4 **Recall.** Subject to the provisions of Section 718.301, Florida Statutes, and subject to the provisions of Article 4 of these Bylaws, any member of the Board may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all Voting Interests. A special meeting of the Unit Owners to recall a member or members of the Board may be called by ten percent (10%) of the Voting Interests giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting. The recall of a Director shall be further governed by Section 718.112(2)(j), Florida Statutes.

4.5 **Organizational Meeting.** The organizational meeting of a newly elected Board shall be held after their selection within ten (10) days of their election, at such place and time as shall be fixed by the directors at the meeting at which they were elected. Adequate notice of such meeting shall be posted conspicuously on Condominium property at least forty-eight (48) continuous hours preceding such meeting, except in the case of emergency, and no further notice of the organizational meeting shall be necessary.

4.6 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally, or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board and any committee thereof at which a quorum of the members of that committee are present, shall be open to all Unit Owners, and notice of such meetings, which notice shall specifically state an identification of agenda items, shall be posted conspicuously at each Condominium forty-eight (48) continuous hours preceding the meeting for the attention of the Members of the Association except in the event of an emergency. Any item not included on the notice may be taken upon an emergency basis by at least a majority plus one (1) member of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which non-emergency special assessments, or at which amendments to rules regarding Unit use will be proposed, discussed or approved, shall be mailed or delivered to the Unit Owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the Secretary and filed among the official records of the Association. Upon notice to the Unit Owners, the Board shall, by duly adopted rule, designate a specific location on the Condominium property upon which all notices of Board meetings shall be posted. Notice of any meeting where



regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. The right of a Member to attend such meetings includes the right of the Member to speak at such meetings with reference to all designated agenda items. A Member does not have the right to speak with reference to items not specifically designated on the agenda, but the Board, in its discretion, may permit a Member to speak on such items. The Board may adopt reasonable rules governing the frequency, duration, and manner of Unit Owner statements. Any Member may tape record or videotape meetings of the Board, committee or Members; provided, however, that the equipment utilized does not produce distracting sound or light emissions and subject to any rules which may be adopted by the Board regarding placement, assemblage or usage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

4.7 **Special Meetings.** Special meetings of the Directors may be called by the President or, in his absence, by the Vice President, and must be called by the President or Secretary at the written request of two-thirds (2/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board shall be open to all Unit Owners, and notice of a special meeting shall be posted conspicuously at each Condominium forty-eight (48) continuous hours in advance for the attention of the Members of the Association except in the event of an emergency. However, written notice of any special meeting at which non-emergency special assessments, or at which amendments to rules regarding Unit use will be proposed, discussed or approved, shall be mailed or delivered to the Unit Owners or posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the Secretary and filed among the official records of the Association. Upon notice to the Unit Owners, the Board shall, by duly adopted rule, designate a specific location on the Condominium property upon which all notices of Board meetings shall be posted. Notice of any meeting where regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. The right of a Member to attend such special meetings includes the right of the Member to speak at such meetings with reference to all designated agenda items. The provisions set forth in Section 4.6 hereof with respect to speaking at meetings and recording of meetings shall also apply to special meetings.

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

4.9 **Quorum and Voting.** A quorum at directors meetings shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required by the Declaration, the Articles or these Bylaws. Directors may not vote by proxy or

secret ballot at Board meetings, except, if allowed by statute, for election of officers. A vote or abstention for each director present shall be recorded in the minutes

4.10 **Adjourned Meetings.** If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

4.11 **Presiding Officer.** The presiding officer of the directors' meetings shall be chairman of the Board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside. The President or, in his absence, a majority of the Board, may appoint, without vote, the attorney of the Association or a representative of the Association's management company to act as chairman to conduct the meeting.

4.12 **Order of Business.** The order of business at directors' meetings shall be:

- A. Calling of roll;
- B. Proof of due notice of meeting;
- C. Reading and disposal of any unapproved minutes;
- D. Reports of officers and committees;
- E. Election of officers;
- F. Unfinished business;
- G. New business; and
- H. Adjournment.

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

4.14 **Compensation.** Directors shall not be entitled to any compensation for their services unless compensation is granted by a majority of the Voting Members at a membership meeting. Directors may be compensated for services performed outside the scope of their services as directors. Notwithstanding anything to the contrary contained in this subsection 4.14, no director, officer or manager required to be licensed under Section 486.432, Florida Statutes, shall solicit, offer to accept, or accept any thing or service of a value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or

services to the Association. Any such individual who knowingly so solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to Section 718.501(1)(d), Florida Statutes. However, this subsection 4.14 does not prohibit a director, officer or manager from accepting services or items received in connection with trade fairs or education programs.

4.15 **Developer Control of Board; Turnover.** Developer shall initially appoint three (3) Directors and then thereafter, shall have the right to appoint and replace all Directors and Officers; provided, however, upon the sale or transfer by Developer of fifteen percent (15%) of the Units to Unit Owners other than the Developer, the Members other than the Developer shall be entitled to elect, at a meeting of Members, one-third of the Directors to the Board. Upon the election of such Director by Members other than the Developer, the Developer shall designate one of the three Directors appointed by it to resign. This procedure is intended to give Members other than the Developer a non-controlling minority voice in the operation of the Association so as to (i) allow direct input from non-Developer Members, and (ii) to promote the ability of non-Developer Members to manage the Association, in anticipation of turnover.

The Developer shall turn over control of the Association to Unit Owners other than the Developer upon the first to occur of the following:

- (1) Three (3) years after fifty percent (50%) of the Units have been conveyed to Unit Owners;
- (2) Three (3) months after ninety percent (90%) of the Units have been conveyed to Unit Owners;
- (3) When all of the Units have been completed, some of which have been conveyed to Unit Owners, while none of the others are being offered for sale by Developer in the ordinary course of business;
- (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 Developer in the ordinary course of business; or
- (5) The date which is seven (7) years from the date on which this Declaration is recorded amongst the Public Records of the County.

Upon any of the foregoing events, Developer shall cause all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners, other than the Developer, to elect Directors and assume control of the Association. Within seventy-five (75) days after the Unit Owners are entitled to elect one or more Directors, the Association shall call, and give no less than sixty (60) days' notice for the election of Directors. Provided the foregoing notice of meeting is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control. Control of the Association shall be deemed "turned over" upon any of those events occurring as set forth above. Upon such turnover, the Developer shall retain all

voting rights incident to its ownership of Units. Notwithstanding the foregoing, as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units, the Developer is entitled to elect one member of the Board.

Simultaneously with the time that control of the Association is turned over to Unit Owners other than the Developer (but not more than ninety (90) days with respect to Section 4.15.G below), the Developer shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Developer, including, but not limited to, the following items, if applicable:

- A. The original or a photocopy of the recorded Declaration, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- B. A certified copy of the Articles of Incorporation for the Association;
- C. A copy of the Bylaws of the Association;
- D. The Minute Books, including all minutes, and other books and records of the Association;
- E. Any rules and regulations which have been adopted;
- F. Resignations of resigning officers and Board members who were appointed by the Developer;
- G. Financial records, including financial statements of the Association, and source documents from the incorporation of the Association through the date of turnover. The records shall be audited for the period from the incorporation of the Association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant and at the Developer's expense. The financial records shall be prepared in compliance with Section 718.301(4)(c), Florida Statutes, and performed in accordance with generally accepted accounting standards, as prescribed by the Board of Accountancy;
- H. Association funds or the control thereof;
- I. All tangible personal property that is the property of the Association, and an inventory of such property;
- J. A copy of the plans and specifications utilized in the construction or remodeling of any improvements within the Condominium Property;
- K. Insurance policies;

L. Copies of any Certificates of Completion which may have been issued for the Condominium Property;

M. Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association;

N. All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective with respect to the Condominium Property;

O. A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Association's records;

P. Leases of the Common Elements or other leases to which the Association is a party, if applicable;

Q. Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service; and

R. All other contracts to which the Association is a party.

4.16 **Resignations.** Any director 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. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or Officer (other than appointees of the Developer or other directors or officers who are not Unit Owners when elected or appointed) shall constitute a written resignation of such Director or Officer.

## Article 5 POWERS AND DUTIES

5.1 **Generally.** The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium, and may do all such acts except such acts which by law, the Declaration, or these Bylaws, may not be delegated to the Board by the Unit Owners. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein and to the extent that same is in accordance with Chapter 718, Florida Statutes) the following:

A. Operation, care, upkeep and maintenance of the Common Elements and facilities.

B. Determination and adoption of the annual budget of Common Expenses required for the operation of the Condominium and the Association.

- C. Collection of the assessments for Common Expenses from Unit Owners required to pay same.
- D. Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements.
- E. Adoption and amendment of the rules and regulations covering the details of the operation and use of Condominium property and facilities.
- F. Maintaining of bank accounts on behalf of the Association and the designation of the signatories required therefor.
- G. Purchasing, leasing or other acquiring of Units in the name of the Association, or its designee.
- H. Purchase of Units at foreclosure or other judicial sales, in the name of the Association or its designee.
- I. Selling, leasing, mortgaging, or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association or its designee.
- J. Organization of Corporations to act as designees of the Association in acquiring title to Units or leasing Units by the Association.
- K. Obtaining and reviewing insurance for the Condominium property.
- L. Making repairs, additions and improvements to, or alterations of, the Condominium property, and repairs to and restoration of the Condominium property, in accordance with the provisions of the Declaration, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- M. Enforcement of the obligations of the Unit Owners, the allocation of profits and expenses, and the performance of anything and everything else necessary and proper for the sound management of the Condominium.
- N. Levying fines against the Unit Owners for violations of the rules and regulations established by it to govern the conduct of the Unit Owners.
- O. Purchasing or leasing a Unit for use by a resident manager.
- P. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Elements; provided, however, that (i) the consent of the Unit Owners of at least sixty-five percent (65%) of the Units, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required for the borrowing of any sum in excess of \$25,000.00; and (ii) no lien to secure

repayment of any sum borrowed may be created on any Unit without the consent of the Unit Owner of such Unit. If any sum borrowed by the Board on behalf of the Association pursuant to authority contained in this subparagraph P is not repaid by the Association, a Unit Owner, who pays to the creditor such proportion thereof as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements, shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against the Unit Owner's Unit.

Q. If applicable, contracting for the management of the Condominium and the delegation to such manager such powers and duties of the Board as the Board may deem appropriate in the circumstances, and contracting for the management or operation of portions of the Condominium property susceptible to separate management or operation thereof, and the granting of concessions for the purpose of providing services to the Unit Owners. As an exception to the foregoing, there shall be no delegation of powers and duties wherein (1) same are contrary to the Florida Statutes and are accordingly not susceptible of being delegated; (2) those delegations and duties which may be required by the Declaration and these Bylaws to have approval of the Board or of the Unit Owners; (3) the delegation is a power and duty which, by its very nature, is a decision or fiduciary responsibility to be made by the Board and is therefore not susceptible of delegation; and (4) same may be contrary to the Declaration or the Bylaws.

R. Exercise of all powers specifically set forth in the Declaration, the Articles of Incorporation of the Association, these Bylaws, and in the Act, and all powers incidental thereto.

S. Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units. However, no fee shall be charged in connection with the transfer, sale or approval in excess of the expenditures reasonably required for the transfer or sale, and this expense shall not exceed the maximum amount permitted by law. No charge shall be made in connection with an extension or renewal of a lease.

T. Entering into and upon the Units during reasonable hours, and with as little inconvenience to the Unit Owner as possible when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or Association Property.

U. Collecting delinquent assessments by suit or otherwise, abating nuisances, and enjoining or seeking damages from the Unit Owners for violations of these Bylaws and the terms and conditions of the Declaration.

V. Acquiring and entering into agreements, whereby it acquires leaseholds, memberships, and other possessory or use interest in lands or facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the enjoyment, recreation or other use and benefit of the Unit Owners, and declaring expenses in connection therewith to be Common Expenses; all in such form and in such manner as may be deemed by the Board to be in the best interest of the Association; and in the participation in the acquisition of any interest in lands or

facilities for the foregoing purposes may be direct or indirect, meaning, without limiting the generality of the foregoing, by direct ownership of land or acquisition of stock in a corporation owning land.

5.2 **Hurricane Shutters.** The Board shall adopt hurricane shutter specifications for each Unit within the Condominium, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with applicable building codes and ordinances. Notwithstanding any provision to the contrary herein, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. The installation, replacement, and maintenance of such shutters in accordance with the procedures set forth in the Declaration shall not be deemed a material alteration to the Common Elements, pursuant to the Declaration, these Bylaws, or in accordance with Section 718.113, Florida Statutes.

## Article 6 OFFICERS

6.1 **Executive Officers.** The executive officers of the Association shall consist of a President, one or more Vice Presidents, Secretary, Assistant Secretary, and Treasurer; all of whom shall be elected by said Board. Any two of said offices may be united in one person, except that the President shall not also be the Secretary or an Assistant Secretary of the Association.

6.2 **Appointive Officers.** The Board may appoint such other officers and agents as they may deem necessary, who shall hold office at the pleasure of the Board and shall have such authority and perform such duties as, from time to time, may be prescribed by said Board.

6.3 **Election.** The Board at its first meeting after each annual meeting of general members shall elect all officers, none of whom, except the President, need be a member of the Board.

6.4 **Term.** The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board.

6.5 **The President.** The President shall be the chief executive officer of the Association. Subject to the provisions of Paragraph 4.11 hereinabove, the President shall preside at all meetings of Unit Owners and of the Board. He shall exercise the executive powers of the Association and have general supervision over its affairs and other officers. He shall sign all written contracts and perform all of the duties incident to his office and such other duties as may be delegated to him from time to time by the Board.

6.6 **The Vice President.** The Vice President shall perform all of the duties of the President in the absence of the President, and such other duties as may be required of him by the Board.



6.7 **The Secretary.** The Secretary or Assistant Secretary shall issue notices of all Board meetings and all meetings of Unit Owners; he or she shall attend and keep the minutes of same; shall have charge of all of the books of the Association, as well as its records and papers, except those kept by the Treasurer. All minutes shall be kept in a businesslike manner and shall be available for inspection by Unit Owners and Board members at all reasonable times.

6.8 **The Treasurer.**

A. The Treasurer shall have custody of the Association's funds and securities. He shall keep full and accurate accounts of the Association's receipts and disbursements. He shall deposit all monies and other valuable effects in the name of, and to the credit of, the Association in such depositories as may be designated by the Board. The books shall reflect an account for each Unit in the manner required by the Act.

B. He shall disburse the funds of the Association as may be ordered by the Board, making proper vouchers for such disbursements. He shall render an account of all of his transactions as the Treasurer, and of the financial condition of the Association to the Board whenever it may require it.

C. He shall collect all assessments and shall report promptly to the Board the status of collections.

D. He shall maintain accounting records according to good accounting practices, which records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times. He shall render to Unit Owners or their authorized representatives, at least annually, a written summary of the Association's fiscal activities.

6.9 **Compensation.** Officers shall not receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a director or officer as an employee of the Association, nor preclude the contracting with a director or officer for the management of the Condominium or for any other service to be supplied by such director or officer. Notwithstanding the foregoing provisions of this subsection 6.9, the prohibitions and restrictions set forth in subsection 4.14 hereof shall apply to officers, directors and managers required to be licensed under Section 468.432, Florida Statutes, regarding acceptance of items or services.

6.10 **Resignations.** Any 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. The acceptance of a resignation shall not be required to make it effective. The conveyance of all units owned by and director or officer (other than appointees of the Developer or other Directors or Officers who are not Unit Owners when elected or appointed) shall constitute a written resignation of such Director or Officer.

Article 7  
FINANCES AND ASSESSMENTS

7.1 **Depositories.** The funds of the Association shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the Board. Funds shall be withdrawn only upon checks and demands for money signed by such officer(s) or agent(s) as may be designated by the Board.

7.2 **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January of each year; provided, however, that the Board, whenever it deems it advisable, is expressly authorized to change to a different fiscal year in accordance with the applicable provisions of the Internal Revenue Code.

7.3 **Determination of Assessments.**

A. The Board of Directors shall fix and determine the sum or sums necessary and adequate to assess Unit Owners for their share of the Common Expenses set forth in the budget for the Association and the Condominium. Funds for the payment of Common Expenses shall be assessed against Unit Owners as provided in the Declaration for any Condominium governed by the Association. Assessments shall be payable monthly in advance and shall be due on the first day of each month, unless otherwise ordered by the Board. Assessments shall be made against Unit Owners monthly, as aforesaid, in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Special Assessments, if necessary, shall be levied in the same manner as regular Assessments and shall be payable in the manner determined by the Board. All funds due under these Bylaws and the Declaration are Common Expenses.

B. A copy of the proposed budgets for the Association and the Condominium shall be mailed by the Board to each respective Unit Owner not less than fourteen (14) days prior to the Board meeting at which the budgets will be considered, together with a written notice of the time and place of such meeting. The Directors meeting, at which the budget shall be considered, shall be open to all of the Unit Owners.

C. If an adopted budget requires assessment against the Unit Owners in any fiscal or calendar year exceeding one hundred fifteen percent (115%) of the Assessments for the preceding year, the Board, upon written application of ten percent (10%) of the Unit Owners to the Board received within twenty-one (21) days after adoption of the annual budget, shall call a special meeting of the Unit Owners within thirty (30) days, upon not less than fourteen (14) days' written notice to each Unit Owner. At the special meeting, Unit Owners shall consider and enact a budget. The adoption of the budget shall require a vote of not less than a majority of all Voting Interests. The Board may propose a budget to the Unit Owners at a meeting of Members, or in writing, and if the budget or proposed budget is approved by a majority of the Voting Interests at the meeting or by a majority of the Voting Interests in writing, the budget shall be adopted. If a meeting of the Unit Owners has been called, and a quorum is not present, or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board shall go into effect as scheduled. However, as long as the Developer is in control of the Board, the Board shall not impose an assessment for any year

greater than one hundred fifteen percent (115%) of the prior fiscal or calendar year's assessment without approval of a majority of the Voting Interests.

D. The proposed annual budgets of Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in Section 718.504(21), Florida Statutes. In addition, if the Association maintains Limited Common Elements with the cost to be shared only by those enlisted to use the Limited Common Elements, as provided for in Section 718.113(1), Florida Statutes, the budget or schedule attached hereto shall show amount budgeted therefore. In addition to annual operating expenses, and to the extent applicable, the budgets shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building, painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds Ten Thousand Dollars (\$10,000.00). The amount to be reserved shall be computed by means of a formula which is based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item, as provided in Section 718.112(2)(f)2, Florida Statutes. The Association may adjust replacement reserve assessments annually to take into account any extension of the useful life of a reserve item caused by deferred maintenance. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to Section 718.301, Florida Statutes, Developer may vote to waive or reduce reserves during the first two (2) fiscal years of the operation of the Association, which vote must be taken each budget year, all in accordance with Section 718.112(2)(f), Florida Statutes. After this period, the foregoing reserve account requirements shall not apply to budgets in which the Members of the Association have by a vote or the majority of the total Voting Interests voting in person or by limited proxy at a duly called meeting of the Association, determined for a fiscal year to provide no reserves or reserves less adequate than those described in this subparagraph. Rather, the reserves may only be waived or reduced upon the vote of a majority of all non-developer voting interests voting in person or by proxy, at a duly called meeting of the Association, pursuant to Section 712.112(2)(f), Florida Statutes, and Rule 61B-22.005(8), Florida Administrative Code. No waiver shall be effective for more than one (1) fiscal year, and so long as the Developer owns units in the Condominium, required reserves for such Condominium shall not be waived without the consent of the Developer.

E. When the Board determines the amount of any Assessment, the Treasurer shall mail or present to each Unit Owner a statement of Assessment specifying the amount of same and to whom and where same should be payable and sent. Upon request, the Treasurer shall give a receipt for each payment received.

7.4 **Individual Charges.** Charges by the Association against less than all Members for other than routine Common Expenses, shall be payable in advance. These charges may be collected by Individual Charges, as differentiated from Assessments for Common Expenses. Charges for other than Common Expenses may be made only when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of portions of the Condominium Property or other Association Property, maintenance services furnished at the expense of a Unit Owner, other services

furnished for the benefit of a Unit Owner and fines and damages and other sums due from such Unit Owner.

7.5 **Special Assessments.** In the event the annual Common Assessment proves to be insufficient, the Board may adopt a Special Assessment to cover any shortfall in the manner otherwise set forth for the adoption of regular, annual Common Assessments and, as further provided in the Declaration. Special Assessments shall be made in the manner and for the purposes otherwise provided in the Declaration.

7.6 **Application of Payments and Commingling of Funds.** All funds shall be maintained separately in the Association's name. Reserve and operating funds of the Association may be commingled for purposes of investment, but separate ledgers must be maintained for each account. All sums collected by the Association from Assessments may be commingled in a single fund or divided into more than one fund, as determined by the Board. Any delinquent payment by a Unit Owner shall be applied to interest, costs, attorney's fees, other charges, expenses, advances and general or special Assessments in such manner and amounts as the Board determines. No manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, and no agent, employee, officer, or director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association, as defined in Section 468.431, Florida Statutes.

7.7 **Acceleration of Assessment Installments Upon Default.** Assessments shall be made against Units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. However, if a Unit Owner shall be in default in the payment of an installment of an Assessment, the Board may accelerate the remaining installments of the Assessment for the remainder of the budget year in which the claim of lien was filed. Such accelerated assessments shall be due and payable on the date the claim of lien is filed.

7.8 **Insurance and Fidelity Bonds.** The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association, as required by Section 718.111(11)(d), Florida Statutes. The Association shall bear the cost of any such insurance or bonding, as applicable. Such insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

7.9 **Financial Statements.** The Board shall cause to be prepared financial statements either compiled, reviewed or audited in accordance with Section 718.111(13), Florida Statutes, and the rules promulgated thereto. Said financial statements shall be sent or delivered to each Unit Owner in the Condominium within ninety (90) days following the end of the previous fiscal year unless the Association, upon approval of a majority of the Voting Interests of the Association present at a duly called meeting, have determined for a fiscal year to waive the requirements of compiled, reviewed or audited financial statements. In order to waive any such requirement, the aforesaid meeting must be held prior to the end of the fiscal year, and the waiver shall be effective for only one

fiscal year. In the event of a waiver in accordance with the aforesaid procedures, the Board shall cause to be sent or delivered to each Unit Owner in the Condominium financial reports in accordance with Section 718.111(13), Florida Statutes.

7.10 **Accounting Records and Reports.** The Association shall maintain accounting records for the Condominium according to good accounting practices. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times. The Association may charge Unit Owners, prospective purchasers, holders of first mortgages, or their authorized representatives its actual costs for preparing and furnishing copies of the documents including, but not limited to, the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Question and Answer Sheet, and any amendment to the foregoing to those requesting same. The records shall include, but not be limited to (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid upon the account, and the balance due.

7.11 **Application of Payment.** All assessments by a Unit Owner shall be applied as provided herein, in the Declaration and in the then current budget of the Association.

7.12 **Transfers and Fees.** The transfer, lease, sale, or sublease of Units is subject to the approval of the Board pursuant to the Declaration. The Board may impose a fee in connection with the approval of the transfer, lease, sale or sublease of Units; provided, however, that no fee shall be charged in connection with a transfer, sale or approval in excess of the expenditures reasonably required for the transfer or sale, and this expense shall not exceed the maximum amount allowed by statute. No charge shall be made in connection with an extension or renewal of a lease. Notwithstanding the foregoing, the Association may require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association.

7.13 **Legal Actions by or Against Association.** Unit Owners shall be liable for the payment of any Assessments which relate in any way to the payment of legal or other fees to persons or entities engaged for the purpose of suing, making, preparing or investigating possible claims, or pursuing other such actions, as are provided by Section 9.08 of the Declaration, or otherwise provided in Section 718.111(3), Florida Statutes.

#### Article 8

### ROSTER OF UNIT OWNERS AND MORTGAGEES

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 in a booklet entitled "Owners of Units." A Unit Owner who mortgages his Unit shall notify the Association of the name and address of his mortgagee.

**Article 9**  
**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 Bylaws.

**Article 10**  
**AMENDMENTS**

Except as otherwise provided elsewhere, these Bylaws may be amended in the following manner:

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

10.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-third (1/3) of the Voting Interests of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that approval is delivered to the Secretary at or prior to the meeting. The approvals must be either:

A. Not less than a two-thirds (2/3) of the entire membership of the Board, and by not less than sixty-six and two-thirds percent (66-2/3%) of all of the Voting Interests of the Association; or

B. By not less than sixty-five percent (65%) of the votes of all of the Voting Interests of the Association, represented at any meeting at which a quorum has been attained; provided, however, that in all instances hereunder, irrespective of the quorum achieved, not less than a majority of total Voting Interests of the Association shall have voted in connection with such Amendment(s).

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

#### 10.4 **Proviso.**

A. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or Institutional Mortgagees of Units without the consent of said Developer and Institutional Mortgagees in each instance.

B. Any amendment which would affect the surface water management system, including, but not limited to, drainage easements and the water management portions of the Common Elements, must have the prior approval of the South Florida Water Management District.

10.5 **Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and Bylaws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed. The amendment shall only be valid and be effective when the certificate and copy of the amendment are recorded in the Public Records of Broward County.

#### Article 11

#### **REPLACEMENT OF DEVELOPER-APPOINTED DIRECTOR**

In the event that Developer, in accordance with the privileges reserved herein, selects any person to serve on the Board, Developer shall have the absolute right, at any time, in its sole discretion, to replace such person with another person to serve on the Board. Replacement of any director designated by Developer shall be made by written instrument delivered to any officer, which instrument shall specify the name of the person designated as successor director. The removal of any director and designation of his successor shall become effective immediately upon delivery of such written instrument by Developer to any officer.

#### Article 12

#### **COMPLIANCE AND DEFAULT**

12.1 **Violations.** In the event of a violation (other than the non-payment of an assessment) by a Unit Owner of any of the provisions of the Declaration, Bylaws, or the Act, the Association, by direction of its Board, shall notify the Unit Owner of said breach by written notice, transmitted to the Unit Owner at his Unit by certified mail. If such violation shall continue for a period of fifteen (15) days from the date of mailing of the notice, the Association shall have the right to treat such violation as an intentional, material breach of the Declaration, Bylaws, or the Act, and the Association shall then, at its option, have the following elections:

- A. To commence an action in equity to enforce performance on the part of the Unit Owner;
- B. To commence an action at law to recover its damages;

C. To commence an action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief; or

D. To fine the Unit Owner, as set forth in Section 12.5 hereof.

Upon finding by a court that the Unit Owner was in violation of any of the provisions of the above mentioned documents, the Unit Owner shall reimburse the Association for its reasonable attorney's fees incurred in bringing such action. Failure on the part of the Association to commence an action at law or in equity within sixty (60) days from the date of receipt of a written request, signed by a Unit Owner, sent to the Board, shall authorize any Unit Owner to bring an action in equity or suit at law relating to an alleged violation, in the manner provided for by the Act. Any violations which are deemed by the Board to be a hazard to public health or safety may be corrected by the Association immediately as an emergency matter. The cost thereof shall be charged to the Unit Owner.

12.2 **Negligence or Carelessness of an Owner.** Each Unit Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by the negligence of any member of his family, his or their guests, employees, agents, licensees, or lessees. Such liability shall include misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by an insurance company as to its rights of subrogation. The cost of any maintenance, repair or replacement performed pursuant to this section shall be charged to said Unit Owner as a specific item.

12.3 **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.

12.4 **No Waiver of Rights.** The failure of the Association or Unit Owner to enforce any right, provisions, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future

12.5 **Fines.** In addition to all other remedies of the Association, in the sole discretion of the Board of Directors a fine or fines may be imposed by the Association upon a Unit Owner and/or occupant for failure of a Unit Owner, his employees, guests, tenants, invitees or occupants to comply with the Declaration, Bylaws, Articles and Rules and Regulations of the Association, all as amended from time to time, pursuant to the following procedure:

A. The Association shall send a written notice to the Unit Owner or the person against whom the fine is sought affording an opportunity for hearing at a time and place of the Association's choosing, but not less than fourteen (14) days from the date of said notice. Said notice shall contain:



- (i) A statement of the date, time and place of the hearing;
- (ii) A statement of the provisions of the Declaration, Bylaws, Articles or Rules and Regulations which have allegedly been violated; and
- (iii) A short and plain statement of the matters asserted by the Association.

Said notice shall be sent by first class mail to the address of the Unit Owner on file with the Association and shall be effective upon mailing. As the Unit Owner is responsible for himself, his employees, guests, invitees, lessee's and occupants, the Unit Owner shall be responsible to pay any and all fines assessed without prejudice to the right of the Unit Owner to recover from the actual violator, the amounts paid by the Unit Owner.

B. At the hearing, the Unit Owner, or his agent, including the occupant, invitee, lessee or guest of his Unit, shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity, at the hearing, to review, challenge, and respond to any material considered by the Association.

C. The hearing shall be held before a tribunal of other Unit Owners, which tribunal shall be appointed by the President. In appointing the tribunal, the President will make a good faith effort not to appoint any Unit Owners who may, in any way, be biased with respect to the proceeding. If the tribunal does not agree with the fine, the fine may not be levied.

D. Within fourteen (14) days after said hearing, the Association shall render a written decision, based upon the finding of the above-described tribunal, containing findings of fact and the reasons for its decisions, together with the amount of fines assessed, if any, and said decision shall be mailed to the Unit Owner by first class mail, and shall be effective upon mailing.

No fine for any single violation shall exceed the maximum amount permitted by law. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, provided that no such fine in the aggregate shall exceed the maximum amount permitted by law.

Nothing herein shall be deemed to limit any remedy, legal or equitable, the Association may have against any person, and the above fines procedure is in addition to any and all other remedies the Association may have against any person. All remedies of the Association are cumulative.

12.6 **Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be granted by the Condominium documents.

12.7 **Generally.** Each Unit Owner of a Condominium Parcel, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other equally adequate legal procedures. It is the intent of all Unit Owners of a Condominium Parcel to give to the Association a method and procedure which will enable it at all times to operate on a businesslike basis, to collect those monies due and owing it from Unit Owners of Condominium Parcels, and to preserve each other's right to enjoy his Unit free from unreasonable restraint and nuisance.

#### Article 13

### **LIABILITY SURVIVES TERMINATION OF MEMBERSHIP**

The termination of membership in the Association shall not relieve or release any former Unit Owner or Member from any liability or obligation incurred under, or in any way connected with the Condominium during the period of ownership and membership, or impair any rights or remedies which the Association may have against such former Unit Owner and Member, arising out of, or which is in any way connected with, such ownership and membership.

#### Article 14

### **CERTIFICATE OF COMPLIANCE**

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

#### Article 15

### **COMMON ELEMENTS; LIMITED POWER TO CONVEY**

The Association shall have a limited power to convey a portion of the Common Elements to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

#### Article 16

### **LIMITATION OF LIABILITY**

Notwithstanding the duty of the Association to maintain and repair parts of the property, the Association shall not be liable for injury or damage caused by a latent condition in the property, or for injury or damage caused by the elements, or other Unit Owners or persons.

#### Article 17

### **MANDATORY NON-BINDING ARBITRATION**

The provisions of Section 718.1255 of the Act, and the rules promulgated thereunder with respect to mandatory non-binding arbitration are specifically incorporated herein by reference.

**Article 18**  
**LIENS**

18.1 **Protection of Property.** All liens against a Unit, other than for permitted mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attaches. All taxes and special assessments shall be paid before becoming delinquent as provided in the Condominium documents or Bylaws, whichever is sooner.

18.2 **Notice of Lien.** A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

18.3 **Notice of Suit.** A Unit Owner shall give notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

18.4 **Judicial Sale.** Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

**Article 19**  
**SEAL**

The seal of the Association shall have inscribed thereon the name of the Association, the year of its organization, and the words "non-profit." Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

**Article 20**  
**CONSTRUCTION**

Whenever the masculine singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the content so requires.

Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall, nevertheless, be and remain in full force and effect.


**Article 21**  
**CONFLICT**

If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and of the Declaration, the provisions of the Declaration shall prevail.

Article 22  
CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provisions hereof

The foregoing was approved and adopted as the Bylaws of Nob Hill Business Center Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, at its First Meeting of the Board of Directors on the 26 day of April, 2006.

Sign:   
Print: Andrew Behm  
Title: President