MONROE, COUNTY OFFICIAL RECORDS

> FILE #1392075 BK#1924 PG#439

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RCD Aug 26 2003 12:15PM DANNY L KOLHAGE, CLERK

DECLARATION OF CONDOMINIUM ESTABLISHING OCEANSIDE RESIDENTIAL CONDOMINIUM

OCEANSIDE DEVELOPMENT CORPORATION, a Florida corporation, as Developer, does hereby declare as follows:

ARTICLE I Creation of Condominium

The Developer hereby submits to condominium ownership and use the Condominium Property situate in the County of Monroe, State of Florida, as legally described in Exhibit A attached hereto, and all improvements erected thereon and as depicted in Exhibit B or hereafter erected hereon, and all other property, real, personal or mixed, now or hereafter situated on or within the Condominium Property in the manner provided for in the Florida Condominium Act as it exists on the date hereof. The condominium created by this Declaration shall be known as OCEANSIDE RESIDENTIAL CONDOMINIUM. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Condominium Property, and no portion of the properties of the adjacent Oceanside Marina Condominium (a boat slip condominium which is separate and distinct from the Oceanside Residential Condominium created hereunder) or Oceanside Marina shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association or any rules or regulations promulgated by the Association.

ARTICLE II Definitions

The following terms when used in this Declaration and its exhibits, and as they may hereafter be amended, shall have the meanings stated as follows, except where the context requires otherwise:

- A. "Act" means the Florida Condominium Act (Chapter 718, Florida Statutes), as it exists on the date hereof.
- B. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as same may be amended from time to time.

- C. "Assessment" means a share of the funds required for payment of Common Expenses, which from time to time is charged to the Unit Owner(s).
- D. "Assigns" means any person to whom some or all rights of a Unit Owner have been validly transferred by sale, lease, mortgage or otherwise.
- E. "<u>Association</u>" or "<u>Condominium Association</u>" means Oceanside Residential Condominium Association, Inc., a not-for-profit Florida corporation, which is the entity responsible for the operation of the Condominium.
- F. "Board of Directors" or "Board" or "Directors" means the board of directors responsible for administration of the Association.
- G. "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
 - H. "By-Laws" means the by-laws of the Association, as they exist from time to time.
 - I. "Common Elements" mean and include:
- 1. The portions of the Condominium Property that are not included within the Units.
- 2. An easement of support in every portion of a Unit which contributes to the support of the Buildings and easements through Units for conduits, pipes, ducts, vents, plumbing, wiring, cables and other facilities, equipment and/or fixtures for the furnishing of utility services and/or heating, cooling, ventilation, cable television, communication, data and security systems, or other services to more than one (1) Unit or to the Common Elements, together with related property and installations.
- 3. The property and installations required for the furnishing of utilities for electric, water and sewer and other services to more than one Unit or to the Common Elements.
- 4. Any other parts of the Condominium Property designated as Common Elements in this Declaration or the Act.
- J. "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association 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, without limitation:

- 1. all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; and
- 2. subject to the requirements in Article VI.M, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract with the Developer or other provider designated by or with the consent of Developer; and
- 3. if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; and
- 4. the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property and/or rental or other expenses owed in connection with any Units leased by the Association; and
- 5. any assessments, charges and/or sums payable to the Ingress Easement Grantor pursuant to, and in accordance with the Ingress Easement; and
- 6. any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure. Common Expenses shall not include any separate obligations of individual Unit Owners; and
- 7. all public utility services, including electric, water, sewage, provided to the Condominium by the owner of the Marina or other provider, except and to the extent that such utilities are provided to individual Units.
- K. "Common Interest" means the proportionate undivided interest in fee simple in the Common Elements and the Common Surplus appurtenant to a Unit as expressed in the Declaration.
- L. "Common Receipts" means the following items collected by the Association on behalf of the Condominium:
- 1. rent and other charges derived from leasing or licensing the use of the Common Elements or Condominium Property;
- 2. funds collected from Unit Owners for payment of Common Expenses or otherwise; and
 - 3. receipts designated as common by law, this Declaration or the By-Laws.
- M. "Common Surplus" means the excess of all Common Receipts over Common Expenses.

- N. "The Condominium" means the Oceanside Residential Condominium, which is a form of ownership of real property created pursuant to the Act and under this Declaration providing for ownership by one or more persons or entities of improvements together with an undivided interest in Common Elements appurtenant to each such Unit.
- O. "Condominium Property" means the land and personal property that are subject to condominium ownership under Declaration, all improvements on the land, and all easements and rights appurtenant thereto which are intended for use in connection with the Condominium.
- P. "<u>Declaration of Condominium</u>" or "<u>this Declaration</u>" means this instrument, as it may be amended or supplemented from time to time.
- Q. "Developer" means Oceanside Development Corporation, a Florida corporation, and those of its successors and assigns who shall create or offer for sale or lease Condominium Units in the Condominium in the ordinary course of business, but expressly excluding all other Owners and lessees acquiring Units. 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. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.
- R. "Dispute", for purposes of Paragraph D Article XII, means any disagreement between two or more parties that involves: (1) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (a) require any Owner to take any action, or not to take any action, involving that Owner's Unit; or (b) alter or add to a Common Element; or (2) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (a) properly conduct elections; (b) give adequate notice of meetings or other actions; (c) properly conduct meetings; or (d) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; 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.
- S. "<u>Division</u>" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- T. "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping, if any) located on the Condominium Property including, but not limited to, the Buildings.

- "Institutional Lender" means (1) any bank, savings and loan association, U. insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker or any other lender generally recognized as an institutional type lender, or (2) any mortgage banking company doing business in the State of Florida; or (3) any secondary mortgage market institution, including the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), the Federal Housing Authority ("FHA"), the Veterans Administration ("VA") and such other secondary mortgage market institution as the Association shall hereafter approve in writing; or (4) the Developer. "Institutional First Lender" or "Institutional First Mortgagee" means an Institutional Lender that has acquired a first mortgage lien upon a Unit. A "Majority of Institutional First Mortgagees" means Institutional First Mortgagees of Units by which greater than one-half (1/2) of the voting interest of Units subject to first mortgages held by Institutional First Mortgagees are encumbered. "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, first mortgages on Units securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- V. "<u>Limited Common Elements</u>" means those Common Elements, which are reserved for the use of a certain Unit or Units to the exclusion of all other Units.
- W. "Marina" means the commercial operations known as "Oceanside Marina" and the land upon which it operates its business, the legal description of which in included within Exhibit B.
 - X. "Member of the Association" means the owner or co-owner of a Unit.
- Y. "Parking Easement Property" means the real property subject to the parking rights granted to the Condominium and Unit Owners pursuant to the Parking Easement as described in Article VI, Section K of this Declaration.
- Z. "Person" means an individual, firm, partnership, association, trust or other legal entity, or any combination thereof.
- AA. "Rules and Regulations" means guidelines adopted by the Association concerning the use of the Condominium, as they may be amended from time to time.
- BB. "Slip Condominium" means the Oceanside Marina Condominium, that certain boat slip condominium according to the Declaration of Condominium, as recorded in Official Records Book 1400 at Page 1132 of the Public Records of Monroe County, Florida.
- CC. "Special Assessment" means any assessment levied against any Unit Owner(s) other than the assessments provided for in the Annual Budget.

- DD. "Unit" means a part of the Condominium Property that is subject to exclusive ownership and which includes a proportionate undivided interest in the Common Elements and Common Surplus appurtenant thereto as set forth in this Declaration of Condominium or any amendment thereof.
- EE. "<u>Unit Deed</u>" or "<u>Warranty Deed</u>" means a deed of conveyance of a Unit in recordable form.
 - FF. "Unit Owner" means the person(s) or entity owning a Unit in fee simple.
- GG. "Voting Certificate" means a document which designates one of the record title owners or the corporate partnership or entity representative who is authorized to vote on behalf of a Unit owned by more than one owner or by any entity.
- HH. "Voting Interest" means the voting rights distributed to the members of the Association pursuant to the Act.

ARTICLE III <u>Description of Condominium</u>

- A. <u>Survey and Plans</u>. Attached hereto and made a part hereof as Exhibit B are a survey of the land and graphic description and plot plans of the improvements constituting the Condominium identifying the Units and Common Elements and their ultimate locations and approximate dimensions.
- Identification of Units. The Condominium Property consists of the Buildings B. containing a total of twenty-two (22) Units such that each Unit is identified by a separate numerical designation. The designation of each of such Units is set forth in Exhibit B attached hereto. Exhibit B consists of a survey of the Condominium Property, 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. Said Exhibit B, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (1) an undivided share in the Common Elements and Common Surplus; (2) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (3) 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; (4) membership in the Association with the full voting rights appurtenant thereto; (5) one assigned parking space for each Unit which shall be a Limited Common Element; and (6) other appurtenances as may be provided by this Declaration, including, without limitation, an additional parking space which may be assigned to

a Unit Owner by the Developer for a separate assignment fee (which shall be the sole property of the Developer and for which the Association shall have no claim or interest) pursuant to Article III, Paragraph E below.

- C. <u>Unit Boundaries</u>. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:
- 1. <u>Upper and Lower Boundaries</u>. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
- a. <u>Upper Boundaries</u>. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.
- b. <u>Lower Boundaries</u>. The horizontal plane of the unfinished upper surface of the floor of the Unit.
- 2. <u>Perimetrical Boundaries</u>. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- 3. Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the 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; provided, however, that the exteriors of doors to each Unit facing the interior hallways of the Buildings shall not be included in the boundaries of the Unit.
- 4. 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 that the provisions of subparagraph (3) above shall control unless specifically depicted and labeled otherwise on such survey.
- D. <u>Description of Appurtenances</u>. Each Unit shall be deemed to include the following items (even though all or a portion thereof may not be located within the Unit):
 - 1. all interior walls and partitions that are not load-bearing;
- 2. the inner decorated or finished surfaces of all walls, floors and ceilings including plaster, gypsum board, ceramic tile, marble, paint, wallpaper and floor covering;
 - 3. all appliances and built-in features;

- 4. air-conditioning and heating systems;
- 5. plumbing system; and all utility meters not owned by the public utility or agency supplying service; and
- 6. all electrical wires and fixtures.

No Unit shall be deemed to include any pipes, wires, conduits, lines, or other utility lines running through such Unit which are utilized for more than one Unit, the same being deemed Common Elements.

E. <u>Easements For Ingress & Egress</u>

A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, driveways, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph E shall be encumbered by a leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements. In addition, each Unit Owner and resident, their guests and invitess, shall have a non-exclusive right of ingress and egress over portions of the Ingress Easement Property pursuant to and in accordance with the Ingress Easement for the purpose of ingress and egress to and from the Condominium Property and Maloney Avenue, as depicted in Exhibit B.

F. Mangrove Conservation Areas. The Mangrove Conservation Areas have been and by this Declaration are hereby dedicated as Common Properties. The Mangrove Conservation Areas are established to protect the mangrove wetland area located within the Condominium Property, which Mangrove Conservation Areas are depicted in Exhibit B to this Declaration. The Mangrove Conservation Areas shall be the perpetual responsibility of the Association and may in no way be altered from their natural state. Activities prohibited within the Mangrove Conservation Areas include, but are not limited to, construction or placing of buildings on or above the ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation, with the exception of exotic/nuisance vegetation removal; excavation, dredging or removal of soil material; diking of fencing; any other activities detrimental to drainage; flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation. The Association shall be responsible to preserve the mangroves and other scenic assets and natural features within the Condominium Property to the maximum extent feasible.

- G. <u>Limited Common Elements</u>. The following appurtenances to each Unit shall be Limited Common Elements, all as shown in Exhibit B: the balcony contiguous to each Unit and the hurricane shutters to be installed thereon, the use of which shall be subject to the rules and regulations set by the Association and the restrictions herein, and one (1) parking space as shown in Exhibit B corresponding to the Unit number following a prefix of "P", e.g., parking space "P-101" shall be a Limited Common Element and shall be an appurtenance to Unit 101. There are fifteen (15) additional parking spaces numbered AP-1 through AP-15, each such parking space shall be a Limited Common Element and shall be assignable by the Developer to Unit Owners as provided in Article III, Paragraph E above.
- H. <u>Developer's Right to Alter</u>. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, but without obligation, to:
- 1. make alterations, additions or improvements, structural and non-structural, ordinary and extraordinary, in, to and upon any Unit owned by it (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Building); and
 - 2. expand, alter or add to all or any part of the recreational facilities, if any.
- I. Marina and Slip Condominium Excluded from Condominium. No portion of the Marina or Slip Condominium is included within the Condominium except to the extent that specific easements have been granted by the owner of the Marina in favor of the Condominium. Unit Owners are granted no privileges or other rights to use any of the Marina facilities or slips within the Slip Condominium. Any privileges or other rights to utilize the facilities of the Marina or Slip Condominium must be secured directly from the Marina or Slip Condominium, as the case maybe.
- J. <u>Utility and Sewage Easement</u>. Key West Oceanside Marina, Inc. has provided a temporary easement (the "Sewer Easement") permitting the Condominium to utilizing the existing sewage treatment plant, which easement has been recorded in Official Records Book 1769 at Page 1164, Public Records of Monroe County, Florida. This easement shall terminate as provided in the Sewer Easement. Upon the termination of the Sewer Easement, the Association shall incur all expenses associated with the connection of the sewage system located within the Condominium Property to such off-site sewer system then made available to the Condominium. The Board may elect to pay such hook-up expenses through one or more special assessments.
- K. <u>Utility Easements</u>. Key West Oceanside Marina, Inc. has provided permanent, irrevocable easements for utility connections (the "Utility Easements") permitting the Condominium to install, maintain and utilize underground infrastructure to connect all utilities from service providers to the Condominium, including connections directly to Units, which easements more particularly granted in that certain Utility Easements, as recorded in Official Records Book 1769 at Page 1151, Public Records of Monroe County, Florida.

ARTICLE IV Ownership of Units and Common Elements

- A. Fee Simple. Each Unit shall be conveyed as individual property in fee simple ownership. Included in fee title to each Unit shall be an undivided interest in the Common Elements and in the Common Surplus. The ownership share in the Common Elements and in the Common Surplus is based upon the total square footage of each Unit in uniform relationship to the total square footage of each other Unit in the Condominium. Each Unit shall have a 1/22 undivided fractional ownership interest in the Common Elements and Common Surplus, and 1/22 undivided fractional share of the Common Expenses, appurtenant to each Unit.
- B. Ownership and Conveyance of Undivided Interest in the Common Elements and in the Common Surplus. The undivided interest of each Unit in the Common Elements and in the Common Surplus is deemed to be conveyed or encumbered with its respective Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.
- C. <u>Change of Undivided Interest</u>. The undivided interest appurtenant to each Unit shall not be changed except with the unanimous consent of the Unit Owners and record owners of liens encumbering the Units.
- D. <u>Voting Rights of Unit Owners</u>. On all matters on which the Unit Owners shall be entitled to vote, there shall be only one (1) voting interest (or vote) for each Unit in the Condominium, which vote may be cast by the owner of each Unit or the person designated in the Voting Certificate for the Unit. Should any person own more than one Unit, such person shall be entitled to cast one (1) vote for each Unit owned.
- E. <u>Distribution of Common Surplus</u>. The Common Surplus shall be held and distributed by the Association in the manner and subject to the terms, provisions and conditions thereof. Except for distribution of any insurance indemnity herein provided or termination of the Condominium, any distribution of Common Surplus which may be made from time to time shall be made to the then Unit Owners in accordance with their respective Common Interests.

ARTICLE V Utilization; Restrictions

In order to provide for residential environment of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

A. <u>Use and Occupancy</u>. Each Unit shall be used only for general residential purposes, and shall at all times be used, operated and maintained in accordance with applicable

7 ^

zoning and other requirements, conditions and restrictions applicable to same. Units shall not be used for commercial or business purposes. No more than six (6) persons shall be permitted to occupy any Unit at any given time as overnight occupants of the Unit.

- Ownership by Corporations or Other Business Entities. Whenever any Unit is owned by a corporation or other business entity (hereinafter collectively referred to as "corporation" or "corporate member"), such corporation in addition to renting the unit as a transient accommodation may permit occupancy thereof only by its principal officers, directors shareholders or owners; provided, however, that such corporation shall deliver to the Association a written statement designating the name of the person(s) entitled to use such Unit (a "Designated Person") together with a written covenant by such person(s) to the Association. agreeing to comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, including, without limitation, the occupancy restrictions in paragraph A of this Article V, and acknowledging that the right of such person(s) to use such Unit shall exist only so long as the corporation shall continue to be a member of the Association. Upon demand by the Association to any corporate member to remove any person(s) using such corporation's Unit for failure of such user to comply with the provisions of this Declaration, the By-Laws and/or the Rules and Regulations or for any other reason, the corporate member shall forthwith cause such user to be removed; failing which, the Association, as agent of the corporate member, may take such action as it may deem appropriate to accomplish such removal. All such action by the Association shall be at the cost and of such corporation which shall reimburse the Association therefore upon demand, together with any attorneys' fees the Association may have incurred for such removal. Anything stated herein to the contrary notwithstanding, the provisions of this paragraph do not apply to the Developer.
- C. <u>Children</u>. Children shall be permitted to be occupants of Units. Unit Owners shall be responsible for the conduct of all children residing within their respective Units or visiting their respective Units. The Association shall adopt rules and regulations governing the use of the Common Elements (including, without limitation, the recreational facilities of the Condominium) by children.
- D. <u>Pet Restrictions</u>. Neither Unit Owners, nor their guests, tenants or invitees are permitted to maintain or otherwise bring pets or other animals onto the Condominium Property except as permitted by the rules and regulations adopted by the Board from time to time.
- E. Alterations. No Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements or Common Elements, 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 or the exterior of said Unit, without obtaining the prior written consent of the Association. Curtains or drapes (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Association, in which case they shall be removed and replaced with acceptable items.

1 -

- F. <u>Use of Common Elements and Association Property</u>. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the transient rental use and occupancy of Units.
- G. <u>Nuisances</u>. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association 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 Association Property by its occupants, including the Members.
- H. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction there over shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction there over, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Properly, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this provision.
- Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in areas where initially installed as of the recording of this Declaration in the public records of the County. Installation of hard surfaced floor coverings (other than by the Developer) in any other areas is not permitted, and those areas are to receive sound absorbent, less dense floor coverings, such as carpeting. Any and all replacements of hard surface floor coverings are to be of the same material as originally installed. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Owners will be held strictly liable for violations of these restrictions and for all damages resulting there from and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a building such as the Condominium is very difficult to control. and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

- J. Exterior Improvements. Subject to any provision of this Declaration specifically permitting same, and except for the display of a United States flag as permitted by Fla. Stat. 718.113(4), 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 Buildings (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, interior shutters or blinds, furniture, fixtures and equipment), without the prior written consent of the Association. No additional locks, bolts or other locking devices may be installed in or to the entrance door of any Unit without the consent of the Association.
- K. Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in this Article V and Article VII 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 set of keys, to such Unit.
- L. Antennas, Satellite Dishes. Except to the extent that an Owner is otherwise granted the right under any applicable law, no Owner may install any antenna, satellite dish or other transmitting or receiving apparatus in or upon his or her Unit (and/or areas appurtenant thereto), without the prior written consent of the Association.
- Parking. There are thirty-seven (37) parking spaces within of the Condominium M. Property that have been designed for vehicular parking. All vehicle parking shall be subject to the procedures, rules and regulations adopted from time to time by the Association. The Developer will specifically assign all parking spaces to Unit Owners. Developer shall have the right to charge Unit Owners an assignment fee for a second parking space, the full consideration of which shall be the property of the Developer. The Association shall have no interest in any parking assignment fees paid by Unit Owners to Developer. Unassigned parking spaces shall be controlled by Developer so long as Developer owns a Unit. Developer shall have the right, but not the obligation, to designate up to two (2) unassigned parking spaces for general parking of bicycles, motorcycles or similar vehicles. In such event, the Association shall regulate the use of such parking spaces by adopting rules and regulations for such use. There shall be no assignment fee payable by the Association in connection with the designation of such parking spaces for general parking. While controlled by Developer, unassigned parking spaces may be temporarily assigned, leased or otherwise used by Developer in its sole discretion without interference by the Association or any Unit Owner. At the time of initial conveyance of a Unit to a Unit Owner, the deed of conveyance shall identify the parking space(s) specifically assigned to such Unit Owner. The parking space shall thereafter be an appurtenance to said Unit. In the event a Unit Owner is assigned a second parking space, the Unit Owner shall have the right to assign one parking space to another Unit Owner. Upon such assignment, which shall be filed with the Association and recorded in the public records of Monroe County, the assignee shall have the exclusive use of such parking space. Every Unit must have at least one assigned

parking space, and any attempt to assign a parking space which would leave a Unit without an assigned parking space shall be null and void. There is no guest parking within the Condominium Property except to the extent that a Unit Owner permits a guest or invitee of such Unit Owner to use such Unit Owner's assigned parking space. Guests and invitees of Unit Owners may utilize the Marina's parking spaces, subject to such rules and regulations promulgated by the Marina. Unless specially provided for to the contrary at the sole discretion of the Marina, such parking spaces are non-designated and are to be used on "first-come-first-served" basis. Neither Developer nor Association has or will have any control over the rules and regulations adopted from time to time by the owner of the Parking Easement Property.

No parking shall be permitted on any roadway, and adequate, permanent, payed parking shall be constructed and maintained in accordance with standards acceptable to Developer for such use. All vehicles must be registered with the Association. No vehicles belonging to a Unit Owner or lessee or to a member of the family, guest or employee of a Unit Owner or lessee, or any other person, shall be permitted on the Condominium Property without a pass, permit or decal administered by the Association or shall be parked in such a manner as to impede or prevent access to another parking space. Unit Owners and lessees, their respective employees, agents, visitors, and families shall obey the parking regulations posted within the parking areas, if any, and other regulations promulgated in the future for the safety, comfort, and convenience of the Unit Owners. No motorcycle shall be started or operated within any Covered Parking Area. No motor vehicle that cannot operate on its own power shall remain upon the Condominium Property for more than twelve (12) hours, and no repair or vehicles, except for emergency repairs, shall be made. Vehicles must be parked carefully within the painted lines and pulled up close to the bumper. As a security measure, all automobiles doors should be locked. Vehicle alarm systems shall be in working order, or the Association shall have the right to disarm it and the right to remove or otherwise insist upon Owner clearing of unsightly vehicles. in the discretion of the Association.

N. <u>Trucks, Commercial Vehicles, Buses, Recreational Vehicles, Mobile Homes, Boats, Campers and Trailers.</u>

- 1. Subject to such rules and regulations as the Board may, from time to time, promulgate, and except for pickup trucks, sport utility vehicles or other trucks weighing 3/4 ton or less, no truck, or commercial vehicle of any kind shall be permitted to be parked on the Condominium Property for a period of more than four (4) hours unless said vehicles are temporarily present and necessary in the actual construction or repair of Units or buildings on the Condominium Property, or are necessary and incident to the business on the Condominium Property. No truck or commercial vehicle incident to business shall be parked overnight unless parked inside a garage or within the designated area or areas as approved by Developer or the Association.
- 2. No buses may be parked on the Condominium Property.

- 3. No recreational vehicles, mobile homes, boats, campers and trailers shall be parked or stored in the Condominium Property.
- 4. None of the vehicles named herein shall be used as a domicile or residence, 'either permanent or temporary.
- O. <u>Storage on Balconies/Terraces</u>. No equipment, materials or other items shall be kept or stored on any balcony or terrace area, including but not limited to towels, clothing, bicycles, and furniture other than furniture approved by the Association. The foregoing shall not prevent, however, placing and using of hurricane shutters (which are mandatory and included as a Limited Common Element), patio-type furniture, planters and other related items in such areas, but all such patio furniture, planters and other items must be reasonably acceptable to the Association. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Association shall be final and dispositive.
- P. General Restrictions. The Units and the Common Elements (including Limited Common Elements) shall be subject to the restrictions, easements, conditions and covenants prescribed and established in this Declaration, the By-Laws and the Rules and Regulations, governing the use of the Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Unit. The Units and the Common Elements further shall be subject to all laws, zoning ordinances and regulations of governmental authorities having jurisdiction over the Condominium.
- Q. Prohibited Uses. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements, or any part thereof. No Unit Owner shall permit or suffer anything to be done or kept in his Unit or the Common Elements which would: (1) increase the rate of insurance on the Condominium; (2) obstruct or interfere with the rights of other occupants of the Condominium; (3) annoy other occupants by unreasonable noises or otherwise create a nuisance; (4) interfere with the peaceful possession and proper use of any other Unit or of the Common Elements; or (5) violate any governmental law, ordinance or regulation. No item of any kind shall be affixed or attached to or permanently placed on the Common Elements (including Limited Common Elements) without the prior written consent of the Association.
- R. <u>Leases</u>. Any and all leasing of units shall be subject to the Association's prior written approval, which approval may be withheld on any reasonable grounds. Each Unit shall be leaseable, only in its entirety and not any portion less than its entirety. The Association shall have the right to terminate the lease upon the tenant's default under the provisions of this Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations and/or any other applicable provisions of any agreement, document or instrument governing the Condominium. The Association shall have the right to proscribe a general lease form to be used in the leasing of all Units. Leasing of Units for a term of more than one (1) year shall be subject

to the Association's prior written approval, which approval may be withheld on any reasonable grounds. The Unit Owner shall be liable, jointly and severally with the tenant, to the Association for any costs and expenses of repairing such damages resulting from the tenants acts or omissions. The Association shall have the right to prohibit transient rentals (less than 28 days) whether or not permitted by governmental ordinances or other regulations.

- S. <u>Prohibition of Subdivision of Units</u>. No Unit shall be subdivided or broken into smaller parts than as shown in Exhibit B, nor shall any Unit or portion thereof be added to or incorporated into any other Unit. No Unit shall be subdivided by time through a timeshare condominium, cooperative or other timesharing subdivision.
- T. Prohibition of Separation of Common Elements, Common Interests or Easements from Unit. Any attempt to separate the fee title to a Unit from the undivided interest in the Common Elements and/or in the Common Surplus appurtenant to such Unit or from the easements appurtenant to such Unit shall be null and void. No Unit Owner may assign, hypothecate or transfer in any manner his share in the funds and assets of the Association as an appurtenance to his Unit.
- U. <u>Discharge of Firearms and Weapons</u>. No guns or other weapons shall be discharged on any portion of the Condominium Property including the Common Elements and Units. The terms "firearms and weapons" shall include all dangerous instruments including, but not limited to, riffles, shotguns, pistols, dart guns, BB guns, sling shots and spear guns.
- V. <u>Relief by Association</u>. 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 Article V for good cause shown.
 - W. <u>Effect on Developer</u>. Subject to the following exceptions, the restrictions and limitations set forth in this Article V shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to the leasing of Units, pet restrictions, vehicular restrictions, except as such vehicular restrictions relate to the Developer's construction, maintenance and marketing activities.

ARTICLE VI Easements

A. <u>Easement in Common Elements</u>. Except for those portions that are reserved for exclusive use as Limited Common Elements, the Common Elements shall be subject to a non-exclusive easement in favor of each Unit Owner, its guests and invitees, for all proper and normal purposes. Such easement shall run with each Unit. A non-exclusive easement shall exist for ingress and egress over, through and across streets, common areas, elevators within the

Buildings and walkways, including the hallways within the Buildings for the purpose of going from one portion of the Condominium Property to another. Nothing contained herein shall be construed to allow any person or entity to enter upon the Condominium Property unless it is upon an area specifically designated for such traffic and necessary for such ingress and egress as described above. Under no circumstances shall such traffic be allowed through any Unit.

- В. Right of Access to Units; Utility Services; Drainage; Maintenance. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units. Easements are reserved under. through and over the Condominium Property as may be required for utility services and drainage serving the Condominium. The Association shall have the right of access to each Unit and its Limited Common Elements to inspect, install, maintain, repair or replace all equipment pipes. wires, ducts, vents, cables, conduits and other utility service facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property and to remove any improvements interfering with or impairing the utility service or easements herein reserved. Developer, so long as it owns any Units, and the Association each shall have the following rights, provided that such rights do not prevent or unreasonably interfere with use of the Units for proper purposes: (1) to establish, grant or create additional electric, gas, water, sewer, telephone, burglar alarm, drainage, cable television, master antenna or other utility easements; (2) to relocate any access easements concerning such utility easements; (3) to install, maintain and inspect lines and appurtenances for public or private water, sewer, telephone, burglar alarm, drainage, cable television, master antenna and other utility services; (4) to tap into or connect with and make use of wires, pipes, conduits, flues, ducts, television cables, master antenna, sewers, burglar alarm lines, water lines, drainage lines or other utility lines located in the Condominium Property, and (5) to dedicate any or all of such utility easements to any governmental body, public benefit corporation or utility company if Developer shall deem it necessary or desirable for the proper operation and maintenance of the Condominium Property or any portion thereof, or for the general health or welfare of any Unit Owner, or in connection with the development of the Condominium Property, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the proper use of any Unit. No Unit Owner shall commit or allow to be committed any act within or without his Unit which would interfere with or impair any of the utility using the easements granted herein.
- C. Encroachments Easements. In the event that any Unit shall encroach upon any portion of the Common Elements for any reason not caused by the purposeful or negligent act of the Unit Owner(s) or agent(s) of such Owner(s), then an easement appurtenant to such Unit shall exist for continuance of such encroachment for so long as such encroachment naturally shall exist. In the event that any portion of the Common Elements shall encroach upon any Unit, then an easement appurtenant to the Common Elements shall exist for the continuance of such encroachment for so long as such encroachment naturally shall exist.

- D. <u>Developer's Reservation</u>. Developer reserves easements, rights and licenses in, through, over, under and across the Common Elements for the following purposes: (1) to complete sale of Units; (2) to repair, replace and maintain the Condominium Property where the Association has failed in performing its duties for same; (3) to develop or operate other projects in the vicinity of the Condominium Property; and (4) to erect, maintain, repair and replace, from time to time, signs on the Condominium Property advertising the sale, leasing and/ or renting of Units in the Condominium or in the vicinity of the Condominium Property.
- E. Airspace Easement. Each Unit Owner shall have 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, which easement shall be terminated automatically in any airspace which is vacated.
- F. Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications security and monitoring systems, and other services and drainage in order to serve the Condominium and/or members of the Association. 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, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace any Common Element or (wires, ducts, cables, conduits and other components of the telephone, cable television, communications, security and similar systems, elevator system, and interior hallways and stairs of the Buildings), hot water heaters, service and drainage facilities, and Common Elements contained within the Unit or elsewhere in or around the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- G. Encroachments. If (1) any portion of the Common Elements encroaches upon any Unit; (2) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; (3) any encroachment shall hereafter occur as a result of (a) construction of the Improvements and/or any "improvements" of or upon The Land; (b) settling or shifting of the Improvements; (c) any alteration or repair to the Common Elements, made by or with the consent of the Association or Developer, as appropriate; or (d) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements or the relevant "improvements upon The Land, shall stand."

- H. <u>Construction; Maintenance</u>. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction of any and all improvements upon any portion of The Land, or any part thereof, or any Improvements or Units located or to be located on the Condominium Property, and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.
- I. <u>Sales and Rental Activities</u>. For as long as there are any Units owned by the Developer, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing, rental and construction offices relating to the Condominium, to show model Units and the Common Elements to prospective purchasers of Units, and to erect on the Condominium Property and Association Property signs and other promotional material to advertise or otherwise market the Units, and/or any facilities built or to be constructed upon any portion of the Condominium Property, for sale, lease or occupancy.
- J. Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings and/or any improvements constructed upon The Land, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjoining structures which are necessarily or conveniently located within the Condominium Property, the Association Property and/or The Land.
- K. Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time, to enter the Common Elements and Units for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for the Developer to fulfill any of its warranty obligations. Failure of the Association or any Unit Owner to grant such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Article XVI below.
- L. Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or

Association Property, as 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 or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.

Cable Television. The Developer reserves unto itself, its successors, assigns, M. contractors, designees and nominees, including without limitation, the owner of the Marina (1) ownership of any closed circuit, master antenna, community antenna or cable television system or the like (including any and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominees) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as the "CATV System"), (2) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the CATV System or any part thereof, (3) the right to connect the CATV System to whatever receiving source the owner of the CATV System deems appropriate, (4) the right to enter the Units, upon reasonable notice to the Unit Owner for the purpose of repairing or replacing any portion of any closed circuit, master antenna, community antenna, or cable television system of which it has retained ownership, and (5) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the CATV System (and related, ancillary services to Units, including, but not limited to, securityrelated services) at charges not to exceed those normally paid for like services by residents of single-family homes or condominium units within the general vicinity of the Condominium, and to retain or assign all such charges. The cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a Common Expense. The contract shall be for a term of not less than two (2) years. Any contract made by the board for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the Association. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing-impaired or legally blind Unit Owner who does not occupy the Unit with a non-hearing-impaired or sighted person, or any Unit Owner receiving supplemental security income under Title XVI of the Social Security Act or food stamps as administered by the Department of Children and Family Services pursuant to Section 414.31, may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and, as to such Units, the Unit Owners shall not be required to pay any common expenses charge related to such service. If less than all Members of an Association share the expenses of cable television, the expense shall be shared equally by all participating Unit Owners. The Association may enforce payment of the prorata share of such costs by each Unit Owner receiving cable television.

ARTICLE VII <u>Condominium Association</u>

- A. <u>Incorporation</u>; <u>Operation</u>; <u>Board of Administrators</u>. Developer shall create a Condominium Association to be known as Oceanside residential Condominium Association, Inc., which shall be a not-for-profit Florida corporation and which shall operate the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of the Articles of Incorporation and By-Laws (copies of which are annexed hereto as Exhibits C and D, respectively), the Declaration and the Act. In the event of conflict concerning the powers and duties of the Association as set forth in the Act, the Declaration, Articles of Incorporation and By-Laws, the Act shall control the Declaration, the Declaration shall control the Articles of Incorporation and the Articles of Incorporation shall control the Bylaws. The affairs of the Association shall be governed by a Board of Administration (Board of Directors) consisting of three (3) persons, at least two (2) of whom shall be members of the Association.
- B. Automatic Membership and Voting Rights. Every Unit Owner automatically shall be a member of the Association upon becoming the Owner of such Unit and shall remain a member until his ownership ceases for any reason, at which time his membership shall cease automatically. Other than as an incident to a transfer of title to a Unit, membership in the Association shall not be transferable and any attempted transfer shall be null and void. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance to membership in the Association, or to any of the rights or privileges of such membership. Each Unit Owner shall be entitled to one vote for each Unit owned. When more than one person holds an interest or interests in any Unit, the vote for such Unit shall be limited to one vote as the Owner among themselves determine. The manner of exercising voting rights shall be determined by the By-Laws of the Association.
- C. <u>Limitation Upon Liability of the Association</u>. Notwithstanding its duty to maintain and repair the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than the cost of maintenance and repair caused by latent conditions of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements made by or on behalf of any Unit Owner(s).
- D. <u>Eligibility for Board Members</u>; <u>Developer's Representation on the Board and Voting Rights</u>. In order to be eligible for board membership, a person must meet the requirements set forth in this Declaration. Except for members of the Board eligible to be appointed by the Director, all Board members must be owners of a Unit or an officer, director, partner or other designated person of a Unit owned by an entity other than a natural person. A person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her

residence is not eligible for board membership. Developer shall have the right to elect Directors to the Board and to remove and replace any person(s) elected by it, as is set forth in the Articles of Incorporation and By-Laws. No Director elected by Developer shall be required to disqualify himself from voting upon any contract or lease between Developer and the Association where Developer may have a pecuniary or other interest. Developer shall not be required to disqualify itself in any vote that may come before the membership of the Association upon any contract or lease between Developer and the Association where Developer may have a pecuniary or other interest. All rights in favor of Developer reserved in this Declaration, the Articles of Incorporation and the By-Laws are assignable to and may be exercised by Developer, its successors and assigns.

- E. Assessments. The Board shall have the power to fix, determine and collect from all Unit Owners, as provided in the By-Laws, the sums necessary and adequate to provide for the Common Expenses of the Condominium and such other expenses as are provided for in this Declaration and the By-Laws. The Board shall furnish prompt notice to Unit Owners of all assessments payable. A Unit Owner may not be excused from payment of the Unit Owner's share of Common Expenses unless all other Unit Owners are likewise proportionately excluded from payment, except as provided in subsection E.6. and E.9 below.
- 1. <u>Allocation</u>. All assessments shall be levied in proportion to each Unit Owners Common Interest. Should the Association be the owner of any Unit(s), the assessment which otherwise would be due and payable to the Association on such Unit(s), shall be levied ratably among all of the Unit Owners excluding the Association, based upon their Common Interests, reduced by any income derived from the leasing of such Unit(s) by the Association.
- 2. <u>Billing Unit Owners for Electrical Power</u>. The Association controls as a Common Element, the metering system for electrical consumption for the Condominium and individual Units. The electric utility provider, initially the owner of the Marina pursuant to a Utility Agreement, will provide the Condominium with electric power at a bulk rate. The Association will pay the utility provider for all electrical power at the bulk rate. The Association will bill each Unit Owner on a monthly basis (in advance or in arrears at the election of the Board) based upon the consumption (or estimated consumption) of electrical power for the Unit Owner based upon the reading of the individual meter for each Unit using the bulk rate charged by the utility provider. That portion of the electrical power expense other than the individual consumption by Unit Owners will be included in the annual budget of the Association and will be paid as a Common Expense.
- 3. Special Assessments. Should the assessments prove to be insufficient to pay the costs of operation of the condominium, or should any emergency arise, the Board shall have the authority to levy such additional assessment(s) as it may deem necessary, subject to obtaining the Association Membership's approval of such Special Assessment by majority vote at a duly called meeting of the Association at which a quorum is present. The specific purpose(s) of any Special Assessment shall be set forth in a written notice of such assessment sent or

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delivered to each Unit Owner. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose(s) set forth in such notice or returned to the Unit Owners; provided, however, that upon completion of such specific purpose(s), any excess funds shall be considered Common Surplus. Anything herein to the contrary notwithstanding, so long as Developer owns at least two (2) Units in the Condominium, no Special Assessment shall be authorized without Developer's prior written approval.

- 4. <u>Certificate of Unpaid Assessments</u>. Within fifteen (15) days after request by a Unit Owner or Unit mortgagee, the Association shall provide a certificate stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 5. Payment; Default. The assessments levied against each Unit Owner shall be payable at the main office of the Association in such installments and at such time as may be determined by the Board of Directors as provided in the By-Laws. The payment of any such assessment shall be in default if it is not paid to the Association within ten (10) days of its due date. Assessments and installments thereof not paid within ten (10) days from its due date shall bear interest at eighteen percent (18%) from the date due until paid and shall be further subject to an administrative late fee equal to the greater of \$25.00 or five percent (5%) of each delinquent Assessment or installment.
- 6. Liability of Acquiring Unit Owner for Delinquent Assessments. In the event that a Unit is to be acquired by a subsequent Unit Owner at a time when payment of any assessment by the transferring Unit Owner shall be in default (whether or not a notice of lien has been recorded by the Association), then the subsequent Unit Owner shall be jointly and severally liable with the previous Unit Owner for all unpaid assessments that came due up to the time of the transfer of title to the subsequent Unit Owner. Notwithstanding such joint and several liability, the subsequent Unit Owner acquiring title to the Unit shall pay the amount owed to the Association within thirty (30) days after transfer of the Unit. This liability by the subsequent Unit Owner is without prejudice to any right the subsequent Unit Owner may have to recover from the previous Unit Owner the amounts paid by the subsequent Unit Owner. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Unit and proceed in the same manner as provided in this Article for the collection of unpaid assessments.

Liens; Enforcement.

(a) The assessments shall be levied against each Unit Owner(s) who is bound to pay them. Common Expenses and assessments shall constitute a lien against each Unit and shall have the priority afforded by law. Actions to enforce such claims shall be in conformity with the law. Each Unit Owner also shall be liable personally to the Association for the payment of all such assessments and for interest on any delinquent payment and for all costs of collecting

such payment and interest thereon, including reasonable attorneys fees. No Unit Owner may exempt himself from liability for any assessment levied against him by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way. Assessments that are unpaid after the due date shall bear interest at the maximum rate of interest chargeable to an individual as permitted by the laws of the State of Florida. Once interest has accrued, any subsequent payment shall be applied first to payment of interest and collection costs and then to the payment of the assessment first due.

- (b) Each such lien shall secure: (i) all advances for taxes, payments on account or superior mortgages, liens or encumbrances and any other payments which the Association may pay in order to preserve and protect its lien, and (ii) all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien upon the Unit.
- recording a notice of lien in the Public Records of Monroe County, Florida. A notice of lien shall state the name and address of the Association, the description of the Unit encumbered thereby, the name of the record owner, the amount due and the date when due. No lien shall continue for a period longer than one (1) year after the claim of lien shall have been recorded, unless within that time an action to enforce the lien shall be commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, interest costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. Such claim of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such lien, the same shall be satisfied of record.
- (d) The Association, acting through the Board, shall have the right to assign to Developer or to any Unit Owner(s) or third party its lien rights for the recovery of any unpaid assessments.
- (e) A lien granted to the Association may be foreclosed. No foreclosure action may be filed until at least thirty (30) days after the Condominium 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 attorneys' fees or costs. The notice must be delivered personally to the Unit Owner or made and delivered by registered or certified mail, return receipt requested. 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 notice shall be given as required by law. The notice requirements of this subsection are satisfied if the Unit records a notice of contest of lien as provided in the Act.

- (f) If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit. 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. Furthermore, if the Unit is rented or leased to anyone during the pending of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party that does not prevail in the foreclosure action.
- (g) Institution of a suit at law to collect payment of any delinquent assessment shall not prevent the Association from thereafter seeking enforcement of the collection by foreclosure of any sums then owing to it. Proceeding by foreclosure to effect such collection shall not preclude the institution of a suit at law to collect any sum then owing to it.
- (h) 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 and shall be subject to all of the provisions of this Declaration, the By-Laws, the Rules and Regulations and applicable law. 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 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 grantee.
- who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of (a) the Unit's unpaid common expenses and regular periodic assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (b) one percent (1%) of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. For the purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the mortgage.
- 8. 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.
 - 9. Developer's Right to be Excused from Assessments through the Guarantee

Assessments. Developer, while offering Units for sale may elect to be excused from payment of assessments against those unsold Units for a stated period of time after the Declaration is recorded. Should the Developer so elect, Developer must pay Common Expenses incurred during such period which exceed regular periodic assessments against other Unit Owners. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a Unit in the Condominium. If the Association, while controlled by Developer, has maintained all insurance coverage required under the Act, Common Expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the Association, may be assessed against all Unit Owners owning Units on the date of such natural disaster or act of God, and their respective successors and assigns, including Developer with respect to Units owned by Developer. In the event of such an assessment, all Units shall be assessed in accordance with Section 718.115(2) of the Act. Developer, while an Owner of Units, and while offering the Units for sale, may be excused from payment of assessments against those unsold Units for the period of time Developer has guaranteed to all purchasers or other Unit Owners that assessments will not exceed a stated dollar amount and that Developer will pay any Common Expenses that exceed the guaranteed amount. Such guarantee shall be stated, if so elected by Developer, in the purchase contract with purchasers of Units. Developer may provide that, after the initial guarantee period, Developer may extend the guarantee for one or more stated periods. If the purchase contract or other written agreement between Developer and a majority of Unit Owners other than Developer provides for Developer to be excused from payment of assessments under this subsection, only regular periodic assessments for Common Expenses as provided for in the prospectus and disclosed in the estimated operating budget shall be used for payment of Common Expenses during any period in which Developer is excused. No funds which are receivable from Unit purchasers or Unit Owners and payable to the Association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such Common Expenses.

- F. Budget and Accounting. The Board shall adopt a budget for each fiscal year. Such budget shall contain estimates of all costs and expenses for the proper operation, management, and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and shall take into account the projected income that is to be applied in reduction of the amounts required to be collected as an assessment each year. Common Expenses also shall include the cost of maintaining Common Elements and Limited Common Elements. Assessments shall be established based upon such budget. Upon adoption of the budget, a copy of same shall be delivered to each Unit Owner, although failure to deliver a copy of the budget to each Unit Owner shall not affect the liability of any Unit for such assessment. The Association shall maintain accounting records that shall be open to inspection by Unit Owners or their authorized representatives at reasonable times. Written summaries of such accounting records shall be furnished to Unit Owners or their representatives at least annually.
 - G. Reserves.

- 1. Reserves for Capital Expenditures and Deferred Maintenance. Each annual budget shall include sums to be collected and maintained as reserves to be used for capital expenditures and deferred maintenance. The amount to be reserved shall be computed by the Board by means of a formula based upon estimated remaining useful life and estimated replacement cost of each reserve item. Such reserves may be waived or reduced for a fiscal year by the affirmative vote of a majority of the Voting Interest of the Association at a duly called meeting of the Association. If such a meeting shall have been called and the necessary vote for waiver or reduction shall not have been attained or a quorum shall not have been attained, the reserves as set forth in the budget shall go into effect.
- 2. General Operating Surplus. Each annual budget may include a sum to be collected and maintained as a general operating surplus, which sum may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessment by Unit Owners or as a result of emergencies or to pay other costs or expenses placing financial stress upon the Association. The amount to be allocated to such operating surplus and collected therefore shall not exceed ten percent (10%) of the current annual assessment levied against all of the Unit Owners. Upon accrual in the operating surplus of a sum equal to thirty percent (30%) of the current annual assessment, no further payments shall be collected, unless such operating surplus shall be reduced below the thirty percent (30%) level, in which event, contributions to such operating surplus shall be included in the annual assessment so as to restore the operating surplus to thirty percent (30%) of the current annual assessment.
- H. <u>Collections</u>. All monies collected by the Association shall be treated as the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws. All funds shall be maintained separately in the Association's name. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes. Although all funds and the Common Surplus shall be held for the benefit of the members of the Association, no member shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. When a Unit Owner shall cease to be a member of the Association, the Association shall not be required to account to him for any share of the funds or assets of the Association, or for any sums that he may have paid to the Association.

Alterations.

1. <u>By Unit Owners</u>. No Unit Owner shall make or cause to be made any exterior alteration, addition or improvement to his Unit or any structural alterations, additions or improvements to his Unit or the Common Elements, including Limited Common Elements ("alterations") without the Association's prior written consent. The Board shall have the obligation to answer (i.e., approve, disapprove or request further information) any written request

sent certified mail, return receipt requested, by a Unit Owner for approval of a proposed alteration in such Unit Owners Unit or appurtenant Limited Common Element(s) within thirty (30) days after such request is received. All alterations by the Unit Owners shall be made in compliance with all applicable law, rules and ordinances and regulations and this Declaration. A Unit Owner making or causing to be made any alterations agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless from any liability arising therefrom.

- 2. <u>By the Association</u>. The Association shall have the right, with the written consent of all Unit Owners to make or cause to be made alterations (as distinguished from repairs and replacements) to the Common Elements.
- 3. By Developer. Anything to the contrary notwithstanding, the foregoing restrictions regarding alterations of Units shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Association or other Unit Owners, to make alterations, improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, to and upon any Unit owned by Developer; provided, however, Developer shall not materially alter or modify the appurtenances to a Unit, or change the proportion or percentage of which the owner of the Unit shares the Common Expenses and owns the Common Surplus unless all the record owners of all other Units and all record owners of liens on it join in the execution of an amendment for same and unless all the record owners of all other Units approve such amendment. Any amendment to this Declaration required by a change made by the Developer pursuant to this subparagraph shall be adopted by Developer without the consent or joinder of any Unit Owner or mortgagee and shall be deemed a non-material amendment.

Maintenance and Repair.

any Unit, whether structural or non-structural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor covering, all interior surfaces and the entire interior of the Unit or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense. Notwithstanding the Unit Owner's responsibility to maintain the heating and air-conditioning equipment, all Unit Owners shall arrange for the maintenance and/or replacement of all heating and air-conditioning equipment through the Association. The Association shall select an insured contractor with whom the Unit Owner may elect to enter into a periodic maintenance contract or contract for service on an as-needed basis. No Unit Owner, person or contractor other than the contractor selected and approved by the Association shall be permitted access to the roof of the

Condominium Property where the compressors for the heating and air-conditioning systems are located.

- By the Association. Except to the extent: (a) expressly provided to the 2. contrary herein; or (b) proceeds of insurance are made available therefore, all maintenance, repairs and replacements in or to the Common Elements or Limited Common Elements shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense. The Association shall be responsible for the maintenance, repair and replacement of all of the Common Elements including all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to more than one (1) Unit. Should any incidental damage be caused to any Unit by virtue of any work that may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association, shall, at its expense, repair such incidental damage. The costs of such maintenance on the Common Elements shall be a Common Expense for the Unit Owners. The costs of maintenance of Limited Common Elements shall be a Common Expense for the Unit Owners. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close hurricane shutters in the event of the issuance of a storm watch or storm warning.
- K. <u>Hurricane Preparation</u>. Developer has provided for each Unit a system for removable hurricane shutters. When not in use part of hurricane preparation and protection, all hurricane shutters shall be stored as directed from time to time by the Association in the Rules and Regulations. The Association shall be responsible for determining the times for the placement and removal of such hurricane shutters. Hurricane shutters shall not be used except at the direction of the Association. All labor costs for the placement, removal, maintenance and replacement of hurricane shutters shall be a Common Expense.

ARTICLE VIII Rights to Sell, Lease and Mortgage

No Unit Owner may sell or lease his Unit or any interest therein, except by complying with the following provisions:

- A. <u>Right of First Refusal</u>. Declarant is hereby granted the right of first refusal for the purchase of any Unit as more particularly set forth in this Article VIII.
 - 1. Any Unit Owner who receives a bonafide offer to purchase such Unit Owner's

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 Owner to whom the Outside Offer is made is called an "Offeree Owner"), which the Unit Owner intends to accept, shall within five (5) days following receipt of such Outside Offer give notice by certified mail, return receipt requested, to Declarant of such Outside Offer. Said notice shall be accompanied by a copy of the written Outside Offer and shall state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as Declarant may reasonably require. The giving of such notice to Declarant shall constitute an offer by such Owner to sell such Owner's Unit to Declarant or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Owner who has received such Outside Offer to Declarant that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Owner shall submit in writing such further information with respect thereto as Declarant may reasonably request. Not later than thirty (30) days after receipt of such notice, together with such further information as may have been requested, Declarant or its designee may elect, by sending written notice to such Offeree Owner before the expiration of said thirty (30) day period by certified mail, to purchase such Unit upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Owner. In the event Declarant or its designee shall fail to accept such offer within said thirty (30) day period, the Offeree Owner shall be free to accept the Outside Offer within sixty (60) days after (a) notice of release of Declarant's right of first refusal; or (b) the expiration of the period within which Declarant or its designee might have accepted such offer, as the case may be. In the event the Offeree Owner shall not, within such sixty (60) day period, accept, in writing, the Outside Offer or if the Offeree Owner shall accept the Outside Offer within such sixty (60) day period, but such sale shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Owner thereafter elect to sell such Unit, the Offeree Owner shall be required to again comply with all of the terms and provisions of this Section. Any deed to an Outside Offeror shall provide (or shall be deemed to provide) that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the Bylaws, the Articles of Incorporation, applicable rules and regulations adopted by the Association, as the same may be amended from time to time.

- 2. <u>Sale Voidable</u>. Any purported sale of a Unit in violation of this subsection shall be voidable at any time at the election of Declarant, and Declarant shall have the right to institute legal proceedings to void the conveyance. Said Owner shall reimburse Declarant for all expenses (including attorneys' fees and disbursements incurred in connection with such proceedings).
- 3. Release by Declarant of the Right of First Refusal. The right of first refusal contained in this subsection may be released or waived by Declarant only in the manner provided in herein. In the event Declarant shall release or waive its right of first refusal as to any Unit, such Unit may be sold or conveyed to the Outside Offeror.

- 4. Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by Declarant stating that the provisions of this subsection have been satisfied by a Owner, or stating that the right of first refusal contained therein has been duly released or waived by Declarant and that, as a result thereof, the rights of Declarant thereunder have terminated (as to that sale only) shall be conclusive with respect to all persons who rely on such certificate in good faith. Declarant shall furnish such certificate upon request to any Owner in respect to whom the provisions of this subection have, in fact, terminated or been waived. No fee shall be charged by Declarant in connection with the furnishing of such certificate.
- 5. Exceptions. The provisions of this subsection shall not apply with respect to any sale, transfer, gift or conveyance of any Unit by (a) the Owner thereof to such Owner's spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation or other entity where the Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trust, corporation or other entity, or to any one or more of the above, (b) the Declarant, (c) 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 (d) 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; provided, however, that each succeeding Unit shall be bound by, and such Owner's Unit subject to, the provisions of this subsection.
- Termination of Right of First Refusal. The Declarant's Right of First Refusal
 provided in this section shall terminate at such time as Declarant no longer holds any Unit for
 sale.
- B. Mortgage of Units. Each Unit Owner shall have the right to mortgage his or her Unit without restriction.
- C. Leasing of Units. Each Unit Owner shall have the right to lease his or her Unit on subject to the limitations in Article V, Paragraph R hereof. No portion of a Unit (other than an entire Unit) may be rented. All leases shall be in writing, a form approved by the Association, with the Rules and Regulations attached thereto, and shall grant the Association the right to terminate the lease, and evict the tenant, upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing the Condominium, and shall further provide that the Unit Owner acknowledge its continuing obligation for all provisions of the Condominium documents. A complete and signed copy of any and all leases shall be provided to the Association prior to occupancy of the Unit by the Tenant. Leasing of Units may, if the Association so elects, also be subject to the prior written approval of the Association and the Association may deny permission to lease any Unit on any reasonable grounds the Association may find. The Association shall have the right to require of all tenants that they deposit in escrow with the Association a sum not

to exceed the equivalent of one (1) month's rent which may be used by, the Association to protect against damages and to repair any damage to the Common Elements or other property owned by the Association resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Regardless of whether or not expressed in the applicable lease, all Unit Owners shall be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of his tenant(s) which constitute a violation of, or noncompliance with, the provisions of this Declaration and of any and all rules and regulations of the Association. This subparagraph shall also apply to subleases and assignments and renewals of leases. No lease approved by the Association shall be amended or modified without the Association's approval.

The Association may charge a lease approval fee not in excess of any amount provided for in the Act (as it may be amended from time to time) as a maximum amount for such fees, but no fee shall be charged in connection with the approval of an amendment, modification or extension of a previously approved lease. Additionally, in making its determination as to whether to approve a lessee of a Unit, the Association shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; provided, however, nothing herein shall be construed to require the Association to furnish an alternate lessee in the event the Association disapproves a lease or lessee.

ARTICLE IX Insurance and Reconstruction

Insurance covering the Condominium Property and the Association Property and reconstruction of the Condominium shall be governed by the following provisions:

Purchase, Custody and Payment.

- 1. <u>Purchase</u>. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued either by an insurance company authorized to do business in Florida or a reputable surplus lines carrier.
- 2. 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 Institutional Lender which owns Unit mortgages securing a greater aggregate indebtedness than is owned to any other Institutional Lender (the "Primary Institutional Lender") in the first instance, if requested thereby.
- 3. 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

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their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

- 4. <u>Custody of Policies and Payment of Proceeds</u>. 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).
- 5. <u>Copies to Mortgagees</u>. 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 Lender 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.
- 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.
 - B. <u>Coverage</u>. The Association shall maintain insurance covering the following:
- Casualty and Windstorm. 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 Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association 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 windstorm and 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.

- 2. <u>Liability</u>. 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.
- 3. <u>Workmen's Compensation</u> and other mandatory insurance, when applicable.
- 4. <u>Flood Insurance</u> covering the Common Elements, Association Property and Units if required by the Primary Lender or FNMA/FHLMC, or if the Association so elects.
- 5. Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- 6. <u>Association Property</u>. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- 7. 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 FNMA/FHLMC, 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.

- C. 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 mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by FNMA/FHLMC, 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 Paragraph.
- D. <u>Premiums</u>. 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.
- E. <u>Insurance Trustee</u>; <u>Share of Proceeds</u>. 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 12.10 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:
- 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 (1) below.
- 2. 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.

- 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.
- F. <u>Distribution of Proceeds</u>. 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:
- 1. Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.
- 2. Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- 3. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Subsection E above, and distributed first to all Institutional Lenders in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- 4. <u>Certificate</u>. 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.
- G. <u>Association as Agent</u>. 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.

- H. <u>Unit Owners' Personal Coverage</u>. 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.
- I. <u>Benefit of Mortgagees</u>. Certain provisions in this Article IX entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- J. 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.
- K. 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.
- Reconstruction or Repair After Fire or Other Casualty; 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 75% 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 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional Lenders approve such resolution, the Condominium Property will not be repaired, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as 'determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Paragraph 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.

- M. <u>Plans and Specifications</u>. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- N. 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.
- 1. <u>Disbursement</u>. 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:
- a. <u>Association Lesser Damage</u>. 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 Lender 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.

- b. <u>Association Major Damage</u>. 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 (a) 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.
- c. <u>Unit Owners</u>. 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 effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- d. <u>Surplus</u>. 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.
- e. <u>Certificate.</u> 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.
- O. <u>Assessments</u>. 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.

P. Benefit of Mortgagees. Certain provisions in this Article IX are for the benefit of mortgagees of Units and may be enforced by any of them.

ARTICLE X Condemnation: Eminent Domain

- A. <u>Taking of Common Elements</u>; <u>Deposit of Awards with Association</u>. The taking of Common Elements by condemnation or eminent domain ("the taking") shall be deemed to be a casualty, and the awards for that taking shall be treated as insurance proceeds and shall be with the Association. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association.
- B. <u>Taking of Limited Common Elements</u>; <u>Deposit of Awards with Association</u>. The taking of Limited Common Elements by condemnation or eminent domain ("the taking') shall be deemed to be a casualty, and the awards for that taking shall be treated as insurance proceeds and shall be deposited with the Association. Even though the awards may be payable to the Association or Unit Owners, the Unit Owners shall deposit the awards with the Association.
- C. <u>Taking of Common Elements</u>. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board.
- D. Amendment. Changes in the Condominium caused by the taking shall be evidenced in an amendment to the Declaration, which amendment shall require the approval only of a majority of the Board.

ARTICLE XI Institutional Lenders

A. <u>Rights.</u> So long as any Institutional Lender(s) shall hold any mortgage(s) upon any Unit(s) or shall be the owner(s) of any Unit(s), such Institutional Lender(s) shall have the following rights that may be exercised by written notice to the Association:

- 1. to be furnished, within ninety (90) days following the end of each fiscal year, with a copy of the Association's annual financial statement and report prepared by a certified public accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses,
 - 2. to be given notice by the Association of any membership meeting;
- 3. to inspect the books and records maintained by the Association upon not less than five (5) days' advance, written notice to the Association, which inspection shall take place at the office of the Association during the Association's normal business hours;
- 4. to receive written notice of default concerning any Unit encumbered by a mortgage held by such lender; and
- 5. to receive prompt notice of any substantial damage to the Common Elements or any Unit on which it holds a mortgage without being required to provide the Association with a written request for this information.
- B. Notice. Any Institutional Lender seeking to come within the provisions of this Article shall serve written notice of its intention upon the Association, by registered or certified mail, return receipt request, which notice shall: (1) identify the Unit(s) upon which each such Institutional Lender holds any mortgage(s), (2) identify any Unit(s) owned by such lender together with sufficient pertinent facts to identify the mortgage(s) on such Unit(s); and (3) designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XII Compliance; Default

- A. <u>Compliance, Generally</u>. Each owner, tenant and occupant of a Unit shall comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association. Failure to comply therewith shall be grounds for relief sought by the Association that may include an action for damages, injunctive relief, foreclosure of lien or any combination of the foregoing.
- B. <u>Unit Owner's Liability</u>. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by the act of any member of his family, any guest, employee, agent or tenant, but only to the extent that such expense is not met by the insurance proceeds paid to the Association. Nothing herein, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation. The prevailing party in any action shall be entitled to recover reasonable attorneys' fees and costs pursuant to F.S. 718.303(1).

- C. No Waiver. The failure of the Association or of a Unit Owner to enforce any rights, provisions, covenants or conditions which may be granted by this Declaration or other Condominium documents shall not constitute a waiver to enforce such rights, provisions, covenants or conditions in the future.
- Mandatory Non-Binding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for non-binding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration 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 arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' 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 arbitration 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 arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by 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 arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.
- E. 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 By-Laws, 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 Paragraph E 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.

F. Fines.

- 1. In the event a Unit Owner or occupant fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Condominium Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner or tenant, signed by an officer of the Association. The Unit Owner, tenant, or other party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days. Said notice shall specifically state the amount of the fine, the date, time and place of the hearing; the provisions of the Declaration, By-Laws, or rules which have allegedly been violated; and a short and plain statement of the matter asserted by the Association.
- 2. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral agreement on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association.
- 3. Hearing shall be held before a committee of other Unit Owners appointed by the Board (the "Committee"). At the hearing, the Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The Unit Owner, tenant or other party against whom the fine is sought to be levied shall have the right to attend the hearing and to produce evidence on his behalf, and if the Unit Owner or tenant fails to attend then the hearing will be deemed waived and the Committee may ratify the fine without further proceedings. At the hearing the Committee shall ratify, or disagree with, the fine. If the Committee does not agree with the fine, the fine may not be levied. If a majority of the Committee members agrees with the fine, the Association shall give the Unit Owner, tenant or other party against whom the fine is sought, written notice of the Committee's decision. Any fine shall be due and payable within ten (10) days after written notice of the Committee's imposition of the fine. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as

provided in Subparagraph F of this Declaration.

- G. <u>Costs and Attorneys' Fees</u>. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- Cumulative Remedies. All rights, remedies and privileges granted to the H. Association or the Unit Owners pursuant to any terms, provisions, covenants or conditions of this Declaration or other Condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available at law or in equity. The failure of Developer to enforce any rights, privileges, covenants or conditions which may be granted to Developer by this Declaration or other Condominium documents shall not constitute waiver of the right of Developer thereafter to enforce such right, provision, covenant or condition in the future. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by eighty percent (80%) of all the Members. This Section shall not apply, however, to (1) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (2) the imposition and collection of assessments as provided in Article VII, E hereof, (3) proceedings involving challenges to ad valorem taxation, or (4) counterclaims brought by the Association iii proceedings instituted against it. This Subparagraph H shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures necessary to institute proceedings as provided above.

ARTICLE XIII Official Records

- A. <u>Itemization</u>. From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:
- 1. The plans, permits, warranties and other items provided by Developer pursuant to the Act.
 - 2. A photocopy of the recorded Declaration and all amendments thereto.
 - 3. A photocopy of the recorded By-Laws and all amendments thereto.
- 4. A certified copy of the Articles of Incorporation and all amendments thereto.

1

- 5. A copy of the current Rules of the Association.
- 6. A book or books containing the minutes of all meetings of the Association and the Board, which minutes shall be retained for a period of not less than seven (7) years.
- 7. A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers. In the event of the sale or other transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, each Unit Owner shall immediately notify the Association of each and every mortgage on the Unit, the mortgagee(s), the amount of each mortgage and all pertinent recording information. The mortgagee(s) for any Unit may notify the Association of the existence of any such mortgage(s). Upon receipt of such notice, the Association shall register in its records all pertinent information.
 - 8. All current insurance policies of the Association.
- 9. A current copy of any management agreement, lease or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility.
 - 10. Bills of sale or transfer for all property owned by the Association.
- 11. Accounting of the Association prepared according to good accounting practices, which accounting records shall be maintained for a period of not less seven (7) years. The accounting records shall include, but not be limited to:
- a. accurate, itemized and detailed records of all receipts and expenditures.
- b. a current account and a quarterly or annual statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each assessment, the amount paid upon the account and the balance due.
- c. all audits, reviews, accounting statements and financial reports of the Association.
- d. all contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

- 12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by Unit Owners, which shall be maintained for a period of one (1) year from the date of the election, vote, or meeting to which the document relates.
- 13. A copy of the current question and answer sheet as described by Section 718.504 of the Act.
- 14. All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.
- 15. Notwithstanding any provision in this Declaration to the contrary, the following records shall not be accessible to Unit Owners:
- a. Any record protected by the lawyer-client privilege as described in Florida Statutes, Section 90.502; and any record protected by the work-product privilege, including any record prepared by an Association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings;
- b. Information obtained by the Association in connection with the approval of any lease, sale or other transfer of a Unit; and
 - c. Medical records of Unit Owners.
- B. <u>Inspection</u>. The official records of the Association shall be maintained in Monroe County and shall be open to inspection by any member of the Association or the authorized representative of such member at all reasonable times.
- C. <u>Financial Reporting</u>. Within ninety (90) days after the end of the fiscal year, or annually on a date provided in the Bylaws, the Association shall prepare and complete, or cause to be prepared and completed by a third party, a financial report for the preceding fiscal year. Within twenty-one (21) days after the financial report is completed or received by the Association from the third party, the Association shall mail to each Unit Owner at the address last furnished to the Association by the Unit Owner, or hand deliver to each Unit Owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner. Financial reports shall be prepared in accordance with such rules and regulations adopted by the Division from time to time.

ARTICLE XIV <u>Termination of Condominium</u>

- A. <u>Termination, Generally</u>. This Condominium may be terminated only by the unanimous consent of the Unit Owners and the holders of mortgages, liens or other encumbrances against such Units. Such election to terminate shall be executed in writing by all of the aforesaid parties, and such instrument(s) shall be recorded in the Public Records of Monroe County, Florida.
- B. Effect. Upon such termination, the Condominium Property shall be owned in Common by the Unit Owners in the same undivided shares as each Owner previously owned in the Common Elements, and the Condominium Property shall be subject to an action for partition by any Unit Owner or mortgagee. The net proceeds of such a partition shall be divided among all Unit Owners in proportion to their Common Interests; provided that no payment shall be made to a Unit Owner until all liens against his Unit have been satisfied out of his share of the proceeds in order of their priority.
- C. <u>Creation of New Condominium</u>. The termination of this Condominium shall not bar the creation of another condominium affecting all or any portion of the same property.

ARTICLE XV Amendments

- A. Proposal. Amendment(s) to this Declaration may be proposed by: (1) the Board acting upon a majority vote; or (2) members owning at least one-third (1/3) of the Voting Interests in the Condominium. Such proposals shall contain the full text of the provision(s) to be amended; new words shall be inserted in the text underlined, and words deleted shall be lined through with hyphens, provided, however, that if the proposed change shall be so extensive that this procedure would hinder, rather than assist the proposed amendment, it shall not be necessary to use underlinings and hyphens as indicators of words added and deleted, but instead, a notation shall be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision ______ for present text." Such proposed amendment(s) shall be transmitted to the President of the Association (or other officer in the President's absence) who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment(s).
- B. <u>Notice</u>. The Secretary shall give each member written notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment(s) in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such special meeting. Any member may waive such

4 -

notice in writing and such waiver, when filed in the records of the Association, whether before or after the meeting, shall be deemed equivalent to the giving of such notice to such member.

- Adoption by Members. At such meeting, an affirmative vote of not less than C. seventy-five percent (75%) of the Voting Interest present in person or by proxy, at a meeting at which a quorum was established, shall be required for the adoption of any proposed Thereupon, such amendment(s) shall be transcribed and certified by the President and Secretary as having been duly adopted. The original or an executed copy thereof, certified and executed with the same formalities as a deed, shall be recorded in the Public Records of Monroe County, Florida, within ten (10) days from the effective date of such amendment(s). No provision of this Declaration shall be amended by reference only to its title or number. The certificate of amendment(s) shall set forth the change in the manner provided in Article XV, Paragraph A and shall refer specifically to the record data identifying this Declaration. Thereafter, a copy of such amendment(s) in recorded form shall be delivered to all of the Unit Owners, but such delivery shall not be a condition precedent to the effectiveness of such amendment(s). A member may submit his written vote in lieu of either attending such meeting or being represented by proxy, provided that such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting. Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.
- D. Adoption by Developer. Without prior approval or participation of any Unit Owners or the Association, Developer may amend the Declaration: (1) to correct omissions or errors; and (2) to make such other changes as provided for in the Act and/or in this Declaration. Amendments by Developer shall require execution only by Developer and shall be recorded in the Public Records of Monroe County, Florida.
- E. Prohibition of Certain Amendments. Except as provided in Article XV, Paragraph D, anything herein to the contrary notwithstanding, the following matters shall not be amended without the prior written consent of all Unit Owners and their respective mortgagees: (1) the change of configuration or size of any Unit in any material fashion; (2) the material alteration or modification of the appurtenances to any Unit; (3) the change of the proportion or percentage by which the owner of a Unit shares the Common Expenses and owns the Common Surplus. No amendment creating time-share estates shall be permitted without the prior written consent of all Unit Owners and their respective mortgagees.

Notwithstanding anything herein to the contrary, the approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially affects, the rights or interests of the Institutional First Mortgagees, including but not limited to those matters set forth in Section 718.110(4) and 718.110(8), Florida Statutes, as amended from time to time, which approvals shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, Developer's rights and privileges granted and

reserved hereunder in favor of Developer shall not be amended without Developer's prior written approval. The provisions of this Article XV, Paragraph E shall not be amended.

- F. 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, permit timeshare estates, 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 all the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment. 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.
- G. <u>Consent by Developer</u>. Notwithstanding anything herein contained to the contrary, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.

ARTICLE XVI Miscellaneous Provisions

- A. Covenants Running with the Land. The restrictions and burdens imposed by this Declaration shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit. This Declaration shall be binding upon Developer and all parties who become Unit Owners in the Condominium, and their respective heirs, legal representatives, successors and assigns.
- B. <u>Limitation on Warranties and Representations</u>. Developer hereby disclaims any and all express or implied warranties as to continuance of any particular view, 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. Further, each Unit Owner, by acceptance of a deed or other conveyance of a Unit shall be deemed to waive and release the applicable "Declarant" from any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of any improvements thereon, or otherwise. As to such warranties that 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. 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. Other than as set

forth in Section 718.203, Florida Statutes, Developer specifically disclaims any intent to have made any warranty or representation in connection with the Condominium Property or the Condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of Common Expenses, taxes or other charges are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied on.

- C. <u>Developer's Miscellaneous Rights</u>. For as long as there are any unsold Units, Developer shall have the right: (1) to use any such Units and portions of the Common Elements for model Units and sales and resales offices or for any other purpose; (2) to display models and the Common Elements to prospective purchasers; and (3) to erect signs and other promotional materials upon the Condominium Property.
- D. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the Rules and Regulations, such dispute or litigation shall be governed by the laws of the State of Florida and all litigation shall originate in the appropriate court in Monroe County, Florida.
- E. No Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.
- F. <u>Ratification</u>. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) shall be deemed to have agreed that all the provisions of this Declaration, and the exhibits attached hereto, as they may be amended, are fair and reasonable in all material respects.
- G. <u>Severability</u>. In the event that any of the terms, provisions or covenants of this Declaration are held to be invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants.
- H. <u>Interpretation of Content</u>. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.
- I. <u>Captions</u>. The captions in this Declaration and exhibits annexed hereto are inserted solely as a matter of convenience and shall not be used in construing the effect of meaning of any of the text of this Declaration or exhibits.

hereunder, the same may be delivered to Unit Owners, either personally or by mail, addressed to such Unit Owners at their places of residence in the Condominium Property. Proof of such mailing or personal delivery by the Association shall be given by the affidavit of the person mailing or delivering said notices. Notices to the Association shall be sent by certified mail, return receipt requested, to the office of the Association at: 5950 Peninsular Avenue, Key West, Florida 33040. All notices shall be deemed given when mailed. Any party may change his mailing address by written notice duly receipted for. Notices required to be given to the personal representative of a deceased owner, or devisee when there is not a personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

K. <u>Schedule of Exhibits</u>. Exhibits attached hereto and made a part hereof are the following:

Exhibit A - Legal Description;

Exhibit B - Survey, Graphic Description and Plot Plans;

Exhibit C - Articles of Incorporation of Oceanside Residential Condominium; and

Exhibit D - By-Laws of Oceanside Residential Condominium Association, Inc.

this day of ______, 2003.

ATTEST:

OCEANSIDE DEVELOPMENT CORPORATION, a Florida corporation

Douglas G. Walker, President

STATE OF FLORIDA)	<u>9</u> 9	FILE #139 BK#1924	
COUNTY OF MONROE	<u> </u>			

BEFORE ME, the undersigned authority, a notary public, authorized to administer oaths in the State of Florida, personally appeared Douglas G. Walker and Roger Greene, as president and secretary, respectively, of Oceanside Development Corporation, a Florida corporation () to me known to be the individuals described in, or () who produced Florida driver's licenses for identification, and () did () did not take an oath.

SWORN and subscribed to before me this / Iday of July, 2003.

Notary Public,

State of Florida at Large

My Commission Expires:

OFFICIAL NOTARY SEAL JOHN R ALLISON III NOTARY PUBLIC STATE OF FLORIDA COMMISSION NO. CC955810 IY COMMISSION EXP. JULY 19.200

CONSENT AND JOINDER OF MORTGAGEE

REPUBLIC BANK, being the owner and holder of the mortgage lien encumbering the parcel of real property described in the foregoing Declaration of Condominium, hereby consents to and joins in the filing of the Declaration of Condominium of OCEANSIDE RESIDENTIAL CONDOMINIUM.

This consent of Mortgagee is executed at Key West, Florida, this 4 day of July, 2003.

REPUBLIC BANK, a Florida banking corporation

By: Vice President

STATE OF FLORIDA

SS:

COUNTY OF MONROE

Before me personally appeared <u>Bither</u>, as Vice President of REPUBLIC BANK, a Florida banking corporation, who me known to be the individuals described in, or () who produced Florida driver's licenses for identification, and () did widd not take an oath.

WITNESS, my hand and official seal, this 14, day of July, 2003.

Gail Thompson
MY COMMISSION # DD175343 EXPIRES
January 2, 2007
SONDED THRU TROY FAIR INSURANCE, INC.

Notary Public,

State of Florida at Large

My Commission Expires:

CONSENT OF CONDOMINIUM ASSOCIATION

OCEANSIDE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC., a Florida notfor-profit corporation, having a vested interest in the parcel of real property described in the foregoing Declaration of Condominium, hereby consents to and joins in the filing of the Declaration of Condominium of OCEANSIDE RESIDENTIAL CONDOMINIUM.

This Consent of Condominium Association is executed at Key West, Florida, this day of July, 2003.

ATTEST:

RESIDENTIAL COMDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation

Douglas G. Walker, President

STATE OF FLORIDA

) SS.

COUNTY OF MONROE

BEFORE ME, the undersigned authority, a notary public, authorized to administer oaths in the State of Florida, personally appeared Douglas G. Walker and Ann M. Rozelle, as president and secretary, respectively, of OCEANSIDE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation to me known to be the individuals described in, or who produced Florida driver's licenses for identification, and () did () did not take an oath.

SWORN and subscribed to before me this day of July, 2003.

My Commission Expires:

07.09.03

Oceanside Residential Condonninium

CONDOMINIUM LEGAL DESCRIPTION

A parcel of land located in Section 36, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida and being more particularly described as follows: Commence at the Northeast Corner of Lot 3, Block 61, "George McDonalds Plot of a Part of Stock Island", according to the plat thereof, as recorded in Plat Book 1, at page 55, of the Public Records of Monroe County; thence South for a distance of 265.88 feet; thence West for a distance of 100.00 feet; thence South for a distance of 339.68 feet; thence West for a distance of 67.20 feet to the Point of Beginning; thence menader the approximate Mean High Water Line for the following twenty-two (22) metes and bounds; thence S.04°53'14"W., a distance of 50.44 feet; thence S.03°31'10"W., a distance of 60.33 feet; thence S.04°56'57"E., a distance of 108.26 feet; thence S.06°27'03"W., a distance of 123.44 feet; thence S.57'33'15"W., a distance of 86.74 feet; thence S.81'19'27"W., a distance of 44.77 feet; thence N.74*55'09"W., a distance of 14.27 feet; thence N.38°14'22"E., a distance of 83.55 feet; thence N.21°12'00"E., a distance of 20.97 feet; thence N.28*26'29"E., a distance of 45.45 feet; thence N.08°28'07"E., a distance of 14.52 feet; thence N.44°57'55"W., a distance of 32.90 feet; thence N.45*09'29"W., a distance of 12.09 feet; thence S.87°09'32"W., a distance of 29.15 feet; thence N.75°12'35"W., a distance of 17.77 feet; thence N.23°09'22"W., a distance of 52.43 feet; thence S.89°35'35"W., a distance of 7.15 feet; thence N.00°10'56"E., a distance of 7.23 feet; thence S.79°00'39"W., a distance of 63.72 feet; thence N.79°00'34"W., a distance of 28.33 feet; thence S.77°29'51"W., a distance of 80.86 feet; thence N.88*49'09"W., a distance of 41.75 feet; thence leaving the said Mean High Water Line for a distance of 103.41 feet; thence East for a distance of 81.33 feet; thence North for a distance of 12.00 feet; thence East for a distance of 157.53 feet to a point of curvature of a curve concave to the the Northwest; thence left along the said curve, having for its elements a radius of 32.00 feet and a central angle of 90°00°00" for a distance of 50.27 feet to a point of tangency; thence North for a distance of 36.77 feet; thence East for a distance of 106.74 feet to the Point of Beginning. Containing 64,712.34 Square Feet or 1.4856 Acres, more or less.

"EXHIBIT A"

Oceanside Residential Condonninium

EXHIBIT B TO THE
DECLARATION OF CONDOMINIUM OF
"OCEANSIDE RESIDENTIAL CONDOMINIUM"

CONDOMINIUM SURVEY,
PLOT PLAN, UNIT LOCATION,
FLOOR PLAN & LEGAL DESCRIPTION

Sheet 1 of 21

Oceanside Residential Condominium
5950 Pennisular Avenue, Key West, Florida 33040

U1-26/

Scale: 1"=20' Ref. Flood panel No. 1736 g Dwn. By: F.H.H. Flood Zone: VE Flood Elev 13'

REVISIONS AND/OR ADDITIONS
6/4/01: Name. Evb B 7/12/03: Unit Numbers
8/7/01: L.C.E.

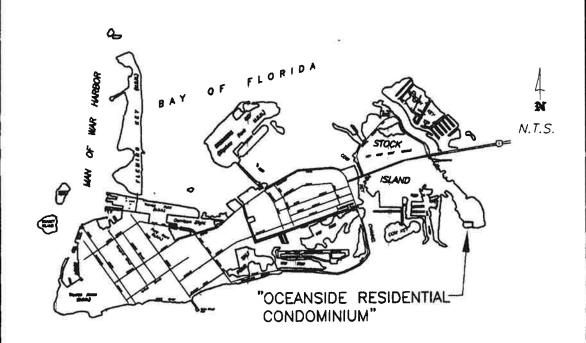
11/24/02 Revise Brundary Megn High Water sing

FREDERICK H HII DERPANDT ENGINEER PLANNER SURVEYOR

> 3150 Northside Drive Suite 101 Key West, FL 33040 (305) 293 -0466 Fax (305) 293-0237

Oceanside Residential Condominium

LOCATION MAP



CHANNEL ATLANTIC

City of Key West & Stock Island

Sheet 2 of 21

Oceanside Residential Condominium
5950 Pennisular Avenue, Key West, Florida 33040
CONDOMINIUM SURVEY

Dwn No:
01-267

1/24/02: Revise Boundary, Mean High Water Line

8/7/01: L.C.E.

c/dwg/stockisland/aceanside

FREDERICK H. HILDEBRANDT ENGINEER PLANNER SURVEYOR

3150 Northeide Drive Suite 101 Key West, Fl. 33040 (305) 293-0466 Fox. (305) 293-0237

FILE #1392075

BK#1924 PG#496 Oceanside Residential Condonninninnin

LEGEND FOR GRAPHIC DESCRIPTION

Overall Boundary Line

Unit Boundary Line

Roof Line

Building Line

- a. Each "Balcony" is a Limited Common Element.
 b. Common Elements are designated as "CE".
 c. Parking spaces are designated as "F-__ followed by the space number. All Parking Spaces are limited Common Elements
 d. There may exist some variation between the proposed improvements and
- the improvements as constructed.
 e. Except for Sheet 5, this is not a "Survey", only a graphic depiction of the description and proposed improvements.

Sheet 3 of 21

Oceanside Residential Condominium 5950 Pennisular Avenue, Key West, Florida 33040 Dwn No CONDOMINIUM SUBVEY

Flood panel No 1736 1"=20" Dwn. By: F H.H. 4/21/01 Flood Elev REVISIONS AND OR ADDITIONS

7/12/03: Unit Numbers

8/7/01: L.C.E. 11/24/02: Revise Boundary, Mean High Witter Line

dwg/strevisions/o enn de

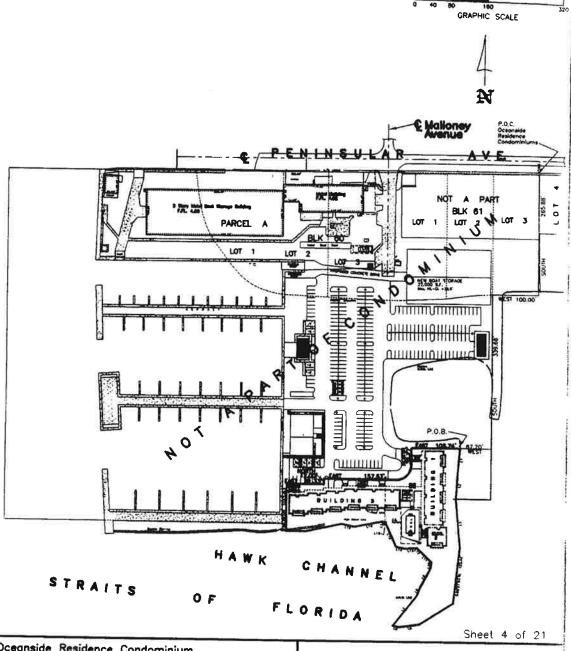
FREDERICK HILDEBRANDT H.

> 3150 Northside Drive Suite 101 Key West, Fl. 33040 (305) 293--046£ Fax. (305) 293--0237

Oceanside Residential Condominium

SITE PLAN

FILE #1392075 BK#1924 FG#497



Oceanside Residence Condominium
5950 Pennisular Avenue, Key West, Florida 33040
CONDOMINIUM SURVEY

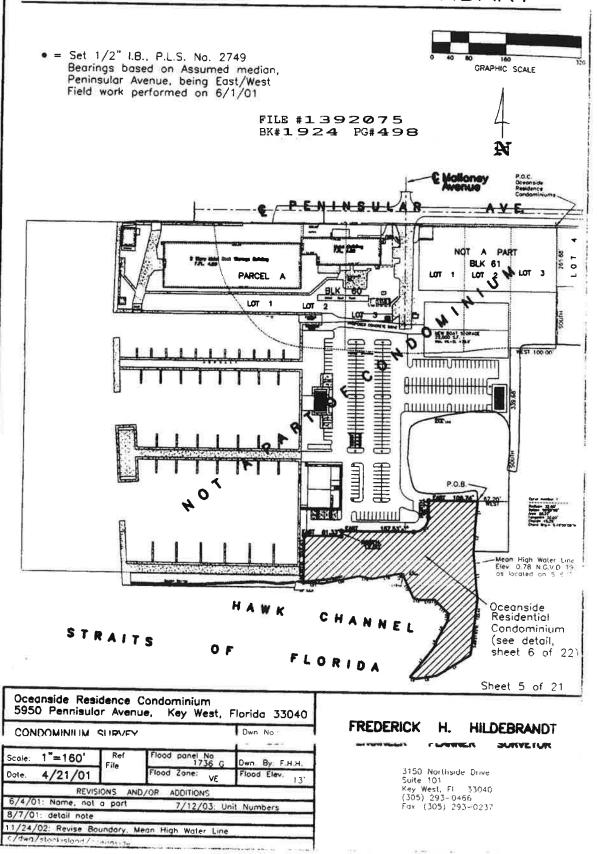
6/4/01: Name, not a part

11/24/02: Revise Boundary, Mean High Water Line
c/dwa/stockisland/oceanside

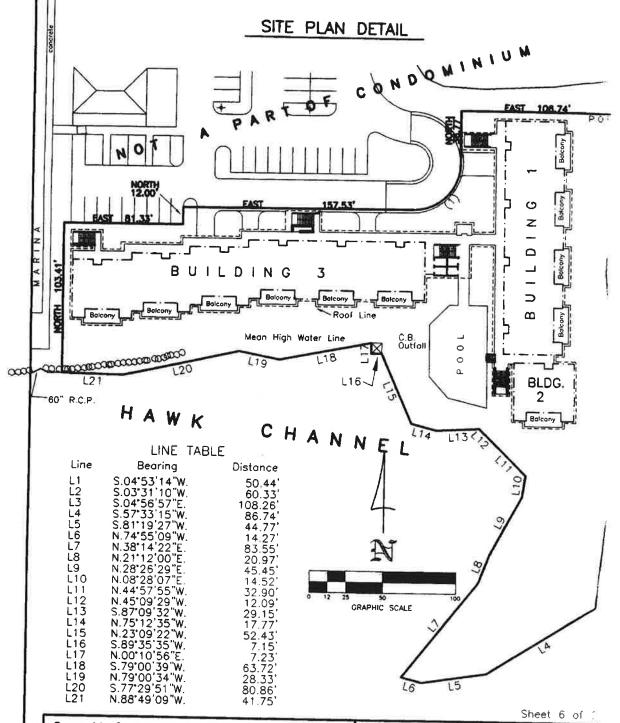
FREDERICK H. HILDEBRANDT

3150 Northside Drive Suite 101 Key West, FI 33040 (305) 293-0466 Fax. (305) 293-0237

Oceannside Residential Condomniuminum Boundary



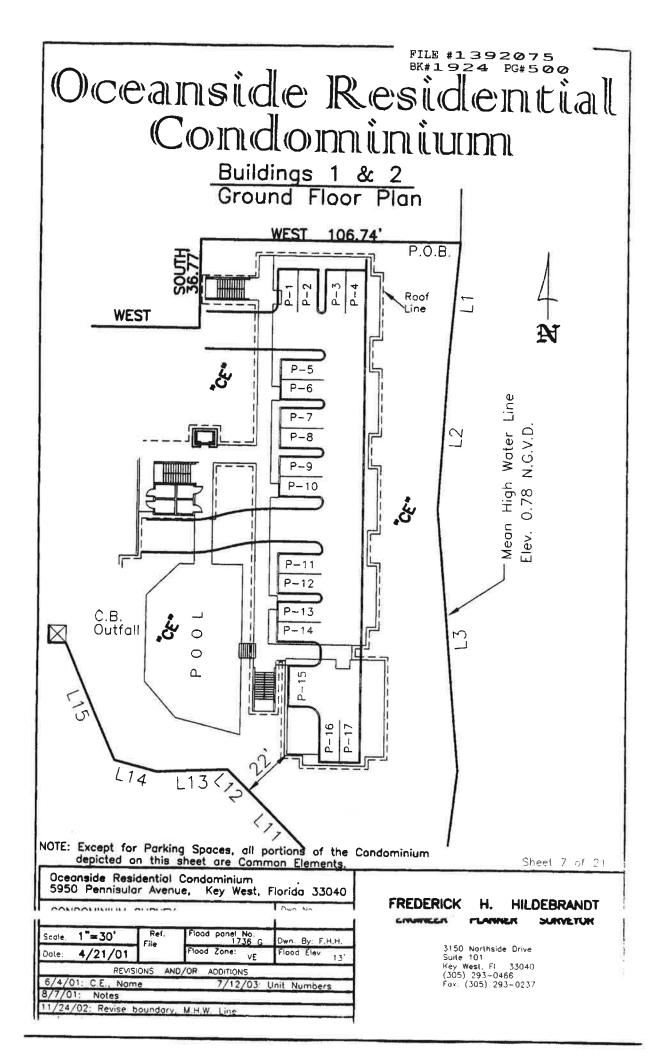
Oceanside Residential Condonninium



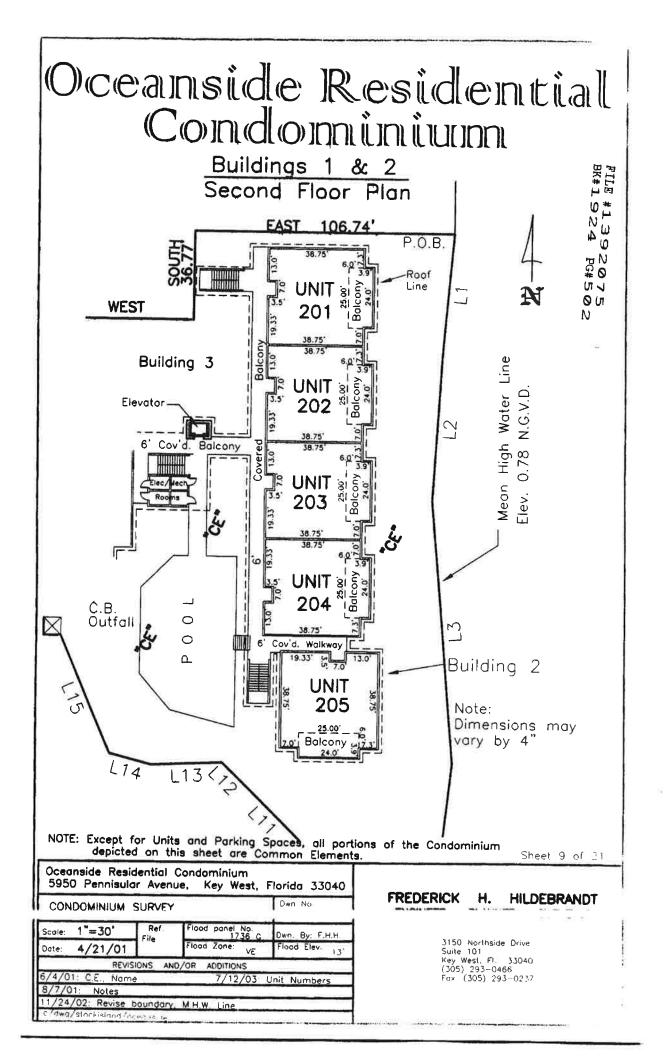
Oceanside Residential Condominium 5950 Pennisular Avenue. Key West, Florida 33040

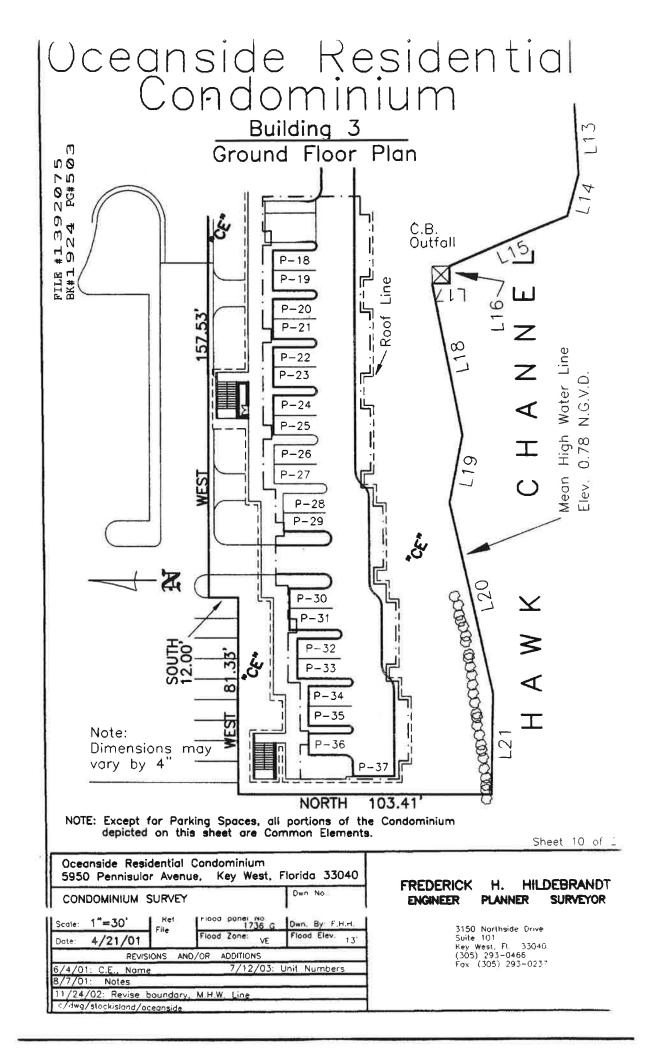
FREDERICK H. HILDFRRANDT

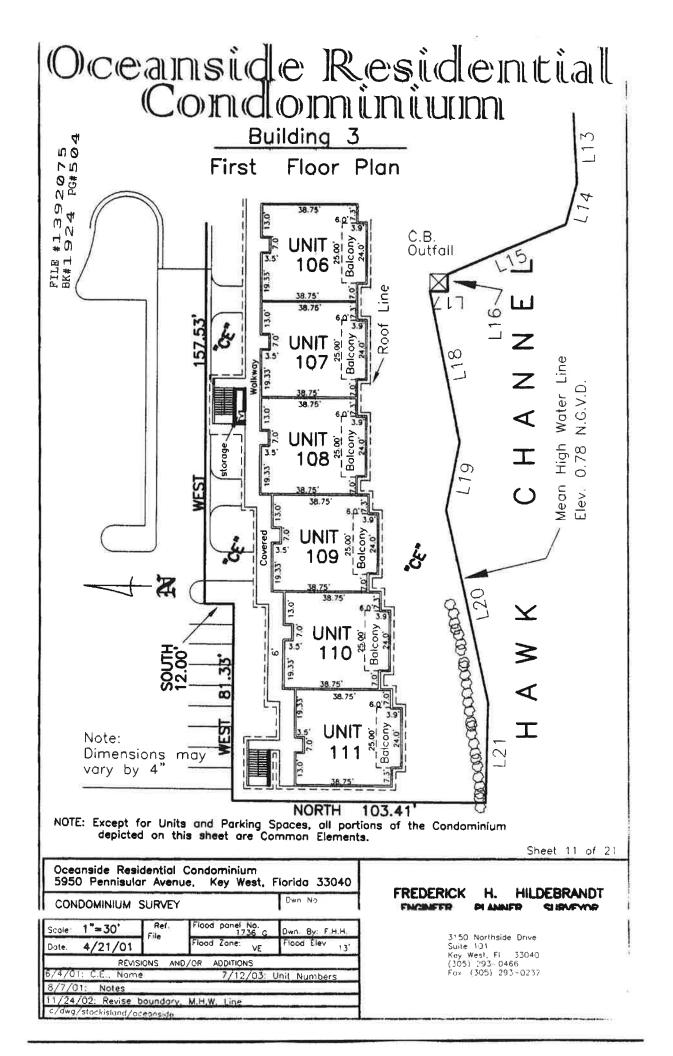
3150 Northside Drive Suite 101 Key West, FL 33040 (305) 293-0466 Fax (305) 293-0237

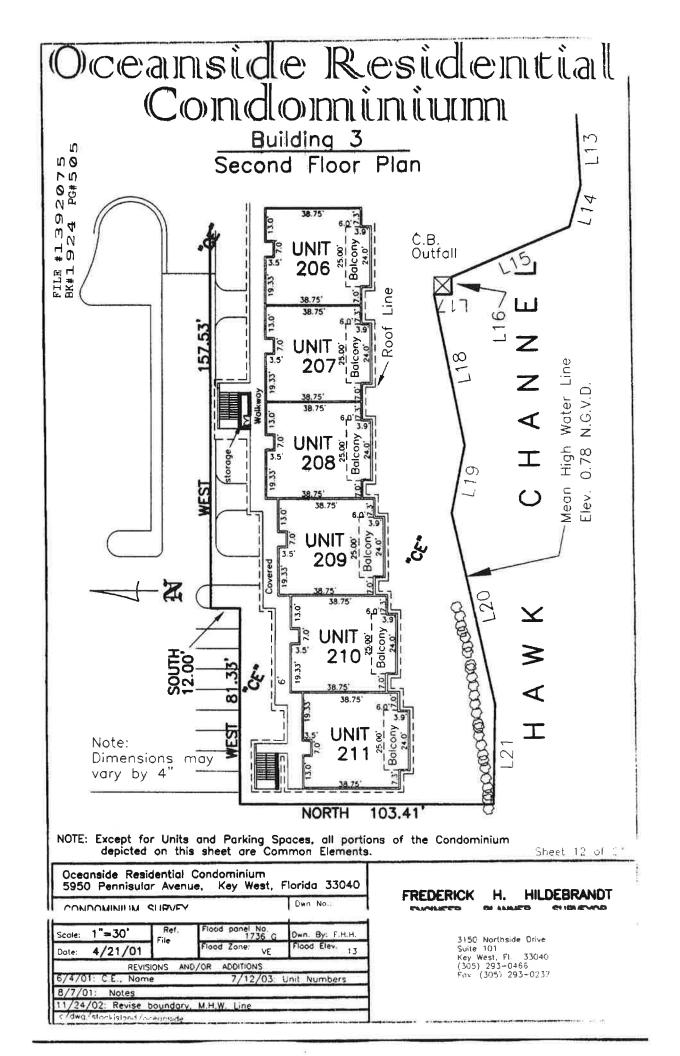


Oceanside Residential Condonninininin Buildings 1 & 2 First Floor Plan .O.B. 106.74 Roof Line **WEST** 101 Building 3 Mean High Water Line UNIT Elevator 102 6' Cov'd. Balcony 103 104 Ć.B. Outfall 0 0 Cov'd. Walkway Building 2 UNIT 105 Note: Dimensions may vary by 4 NOTE: Except for Units and Parking Spaces, all portions of the Condominium depicted on this sheet are Common Elements. Sheet 8 of 21 Oceanside Residential Condominium 5950 Pennisular Avenue, Key West, Florida 33040 FREDERICK HILDEBRANDT CONDOMINIUM SURVEY 1"=30" Dwn. By F.H.H. 3150 Northside Drive 4/21/01 Flood Zone: Suite 101 Key West, Fl 33040 (305) 293-0466 Fox (305) 293-0237 ADDITIONS 7/12/03: Unit Numbers 8/7/01: Notes 11/24/02: Revise boundary, M.H.W. Line





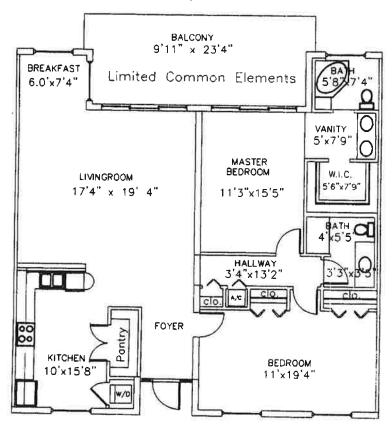




Oceanside Residential Comdominium Unit Layout

Units 102, 103, 105, 202, 203, 205 106-110, 206-210

NO 75 0 #5d 0.4 m 7 # 0



Area: Interior . . 1352± S.F. Balcony . 239± S.F.
Total: 1591± S.F.

Sheet 13 of 21

Oceanside Residential Condominium 5950 Pennisular Avenue, Key West, Florida 33040 Flood panel No. 1736 Scale 1/8" = 1' Own. By: F.H.H. Flood Elev 13' Flood Zone: Date: 4/21/01 REVISIONS AND/OR ADDITIONS 7/12/03: Unit Numbers 8/7/01: L.C.E. 11/24/02: Revise Boundary, Mean High Water Line

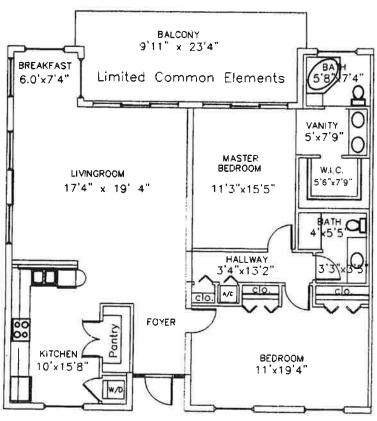
FREDERICK HILDEBRANDT SURVETUR

> 3150 Northside Drive Suite 101 Key West, FI 33040 (305) 293-0466 Fax: (305) 293-0237

Oceanside Residential Condonniniunni Unit Layout

Units 111, 211

FILE BK# 1



Area: Interior . 1352± S.F.

Balcony . 239± S.F.

Total: . . 1591± S.F.

Sheet 14 of 21

Oceanside Residential Condominium
5950 Pennisular Avenue, Key West, Florida 33040

CONDOMINHUM SURVEY

Dwn No.

Scale: 1/8" = 1' Ref. Flood panet No. 1736 g Dwn, By: F.H.H

Date: 4/21/01 Flood Zone VE Flood Elev. 13'

REVISIONS AND/OR ADDITIONS
6/4/01: Name 7/12/03: Unit Numbers
8/7/01: L.C.E.

11/24/02: Revise Boundary, Mean High Water Line

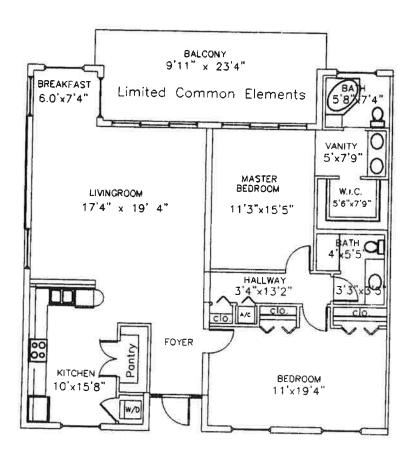
FREDERICK H. HILDEBRANDT

3150 Northside Drive Suite 101 Key West, Fl. 33040 (305) 293-0466 Fox (305) 293-0237

Oceannside Residential Condonnium

<u>Unit Layout</u> Units 101, 201, 104, 204

FILE #1392075 BK#1924 PG#508



Area:

Interior . 1352± S.F.

Balcony . 239± S.F.

Total: . 1591± S.F.

Sheet 15 of 21

Oceanside Residential Condominium
5950 Pennisular Avenue, Key West, Florida 33040

CONDOMINIUM SURVEY

Date: 4/21/01

File

1.736 G Dwn By F.H.H.
Flood Zone: VE Flood Elev. 13'

REVISIONS AND/OR ADDITIONS
6/4/01: Name
8/7/01: Lic.E.

11/24/02; Revise Boundary, Mean High Water Line

c/dwg/stockisland/oceanside

FREDERICK H. HILDEBRANDT ENGINEER PLANNER SURVEYOR

> 3150 Northside Orive Suite 101 Key West, Ft. 33040 (305) 293-0466 Fcx (305) 293-0237

Oceanside Residential Condominium

Buildings 1 & 2
Vertical Section

FILE #1392075 BK#1924 PG#509

				Roof Ceiling	37.5
UNIT 204	UNIT 203	UNIT 202	UNIT 201		24.5
UNIT 104	UNIT 103	UNIT 102	UNIT 101	1st Floor 14.3	
	Parking	Low E	Beam 13.00		

Building 1

Looking West

	Roof	37.5
	Ceiling	32.5
UNIT 205	2nd. Floor	24.5
UNIT 105	1st Floor 14.3.	
Parking	Low B Ground 3.00	eom 13.00

Building 2

Looking North

Sheet 16 of 21

Oceanside Residential Condominium 5950 Pennisular Avenue, Key West, Florida 33040 CONDOMINIUM SURVEY

	File	the same of the sa		
Date: 4/21/01		Flood Zone: VE	Flood Elev 13	
REVISIO	NS AND	OF ADDITIONS		
6/4/01: Nome		7/12/03	: Unit Numbers	

Two/of all all, of the egos de

FREDERICK H. HILDEBRANDT ENGINEER PLANNER SURVEYOR

3150 Northside Drive Suite 101 Key West, Ft 33040 (305) 293-0466 Fax (305) 293-0237

Oceanside Residential Condonninium

Building 3
Vertical Section

206 106 LNS FNS 207 107 LIND FNS 208 108 LNS FNS Parking 209 109 FNS LNS 210 H LNS 21 LNS FNS

FILE #1392075 BK#1924 PG#510

Looking North

Sheet 17 of 21

	Oceanside Residential Co	ondominium		
	5950 Pennisular Avenue	, Key Wes	it, Florida	33040
	CONDOMINIUM SURVEY	- V-11V-0	Dwn t	lo :
4				

Scale: 1"=30'		Ref File	Flood panel No. 1736 G	Dwn. By: F.H.H.
Dote:	4/21/01	1. "	Flood Zone: VE	Flood Elev.
	REVIS	IONS AND	/OR ADDITIONS	

7/12/03: Unit Numbers

8/7/01 L.C.E 1/24/02: Revise boundary, M.H.W. Line /dwg/stockisland/oceanside FREDERICK H. HILDEBRANDT

3150 Northside Drive Suite 101 Key West, FI = 33040 (305) 293-0466 Fax_e (305) 293-0237

Oceanside Residential Condominium

CONDOMINIUM LEGAL DESCRIPTION

A parcel of land located in Section 36, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida and being more particularly described as follows: Commence at the Northeast Corner of Lot 3, Block 61, "George McDonalds Plat of a Part of Stock Island", according to the plat thereof, as recorded in Plat Book 1, at page 55, of the Public Records of Monroe County; thence South for a distance of 265.88 feet; thence West for a distance of 100.00 feet; thence South for a distance of 339.68 feet; thence West for a distance of 67.20 feet to the Point of Beginning; thence menader the approximate Mean High Water Line for the following twenty-two (22) metes and bounds; thence S.04°53'14"W., a distance of 50.44 feet; thence S.03'31'10"W., a distance of 60.33 feet; thence S.04'56'57"E., a distance of 108.26 feet; thence S.06'27'03"W., a distance of 123.44 feet. thence S.57*33'15"W., a distance of 86.74 feet; thence S.81*19'27"W., a distance of 44.77 feet; thence N.74°55'09"W., a distance of 14.27 feet; thence N.38*14'22"E., a distance of 83.55 feet; thence N.21"12'00"E., a distance of 20.97 feet; thence N.28*26'29"E., a distance of 45.45 feet; thence N.08*28'07"E., a distance of 14.52 feet; thence N.44*57*55"W., a distance of 32.90 feet; thence N.45°09'29"W., a distance of 12.09 feet; thence S.87°09'32"W., a distance of 29.15 feet; thence N.75°12'35"W., a distance of 17.77 feet; thence N.23°09'22"W., a distance of 52.43 feet; thence S.89°35'35"W., a distance of 7.15 feet; thence N.00°10'56"E., a distance of 7.23 feet; thence S.79°00'39"W., a distance of 63.72 feet; thence N.79'00'34"W., a distance of 28.33 feet; thence 5.77'29'51"W., a distance of 80.86 feet; thence N.88'49'09"W., a distance of 41.75 feet; thence leaving the said Mean High Water Line for a distance of 103.41 feet; thence East for a distance of 81.33 feet; thence North for a distance of 12.00 feet; thence East for a distance of 157.53 feet to a point of curvature of a curve concave to the the Northwest; thence left along the said curve, having for its elements a radius of 32.00 feet and a central angle of 90°00°00" for a distance of 50.27 feet to a point of tangency; thence North for a distance of 36.77 feet; thence East for a distance of 106.74 feet to the Point of Beginning. Containing 64,712.34 Square Feet or 1.4856 Acres, more or less.

Sheet 18 of

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2012011111111			Dwn No
Scale: 1"=50"	Ref. File	Flood panel No. 1738 G	Dwn. By: F.H.H
Date: 4/21/01	1	Flood Zone: \'E	Flood Elev 13'
REVIS	IONS AND	I/OR ADDITIONS	

FREDERICK H. HILDEBRANDT

3150 Northside Drive Suite 101 Key West, FL 33040 (305) 293-0466 Fax (305) 293-0237

Oceanside Residential Condonninium

UTILITY EASEMENT LEGAL DESCRIPTION

UTILITY EASEMENT "A":

A parcel of land located in Section 36, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida and being more particularly described as follows: Commence at the Northeast Corner of Lot 3, Block 61, "George McDonalds Plat of a Part of Stock Island", according to the plat thereof, as recorded in Plat Book 1, at page 55, of the Public Records of County; thence West along the South Right-of-Way Line of Peninsular Avenue for 317.27 feet to the Point of Beginning; thence continue WEST along the said South Right-of-Way Line of Peninuslar Avenue a distance of 43.08 feet; thence SOUTH, and leaving the South Right-of-Way Line of Peninuslar Avenue a distance of 166.97 feet; thence \$.1915'31"E., a distance of 54.81 feet; thence SOUTH , a distance of 78.73 feet; thence S.23'40'15"W., a distance of 21.37 feet; thence WEST , a distance of 118.76 feet; thence SOUTH, a distance of 343.66 feet; thence WEST, a distance of 34.46 feet; thence SOUTH , a distance of 20.00 feet; thence EAST , a distance of 242.52 feet; thence SOUTH , a distance of 81.40 feet; thence EAST , a distance of 20.00 feet; thence NORTH, a distance of 111.40 feet; thence WEST , a distance of 208.16 feet; thence NORTH , a distance of 313.66 feet; thence EAST , a distance of 307.65 feet; thence SOUTH , a distance of 73.78 feet; thence EAST, a distance of 41.96 feet; thence N.00°00'00"W., a distance of 93.78 feet; thence WEST, a distance of 219.10 feet; thence N.37*52'03"E., a distance of 38,20 feet; thence N.20*38'05"W., a distance of 61.36 feet; thence NORTH , a distance of 229.43 feet to the said South Right-of-Way Line of Peninuslar Avenue and the Point of Beginning. Parcel contains 38339 square feet or 0.88 acres, more or less.

UTILITY EASEMENT "B":

A parcel of land located in Section 36, Township 67 South, Range 25 East. Stock Island, Monroe County, Florida and being more particularly described as follows: Commence at the Northeast Corner of Lot 3, Block 61, "George McDonalds Plat of a Part of Stock Island", according to the plat thereof, as recorded in Plat Book 1, at page 55, of the Public Records of County; thence West along the South Right—of—Way Line of Peninsular Avenue for 317.27 feet to the Point of Beginning; thence continue WEST along the said South Right—of—Way Line of Peninuslar Avenue a distance of 43.08 feet; thence SOUTH, and leaving the South Right—of—Way Line of Peninuslar Avenue a distance of 166.97 feet; thence S.19*15'31"E., a distance of 54.81 feet; thence SOUTH, a distance of 78.73 feet; thence S.23*40'15"W., a distance of 21.37 feet; thence S.09'49'44"W., a distance of 20.30 feet to the Point of Beginning; thence SOUTH, a distance of 313.66 feet; thence EAST, a distance of 25.00 feet; thence NORTH, a distance of 313.66 feet; thence WEST, a distance of 25.00 feet to the Point of Beginning.

Parcel contains 7842 square feet or 0.18 acres, more or less.

80	

Sheet 19 of 2

HILDEBRANDT

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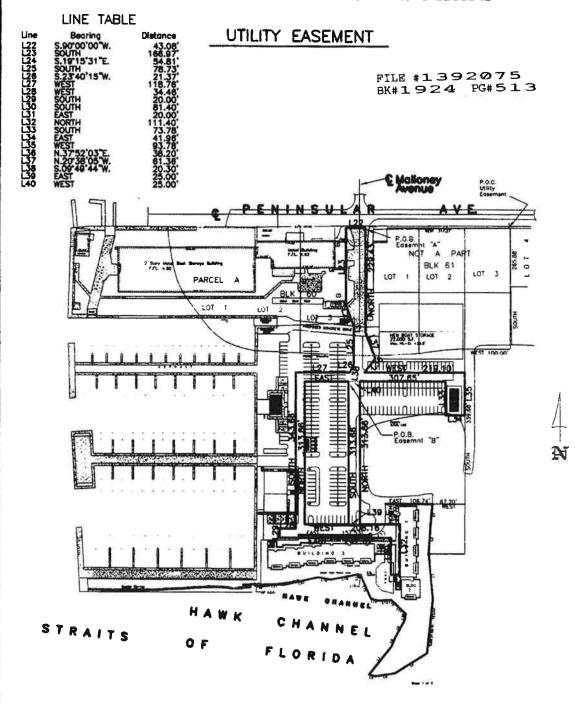
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COVIDOPAIVIILIFE	בווסעפע		Dwn No
Scale 1"=50'	Ref.	Flood panel No. 1736 G	Dwn By FH.H.
Date: 4/21/01		Flood Zone: VE	Flood Elev
REVIS	IONS AND	D/OR ADDITIONS	

3150 Northside Drive Suite 101 Key West, FL 33040 (305) 293-0466 Fax (305) 293-0237

FREDERICK

Oceannside Residential Condonninium



Sheet 20 of 3

Oceanside Residence Condominium 5950 Pennisular Avenue, Key West, Florida 33040 CONDOMINIUM SURVEY Scale: 1"=160' Ref Flood panel No. 1736 G Dwn By: F.H.H. Date: 2/26/02 Flood Zone: VE Flood Elev 13' REVISIONS AND/OR ADDITIONS 7/19/02: Cert. 11/24/02 Revise Boundary, Mean High Water Line 7/12/03: Unit Numbers 7/dwg/stockisland/oceanside/preansideconde

FREDERICK H. HILDEBRANDT

3150 Northside Drive Suite 101 Key West, FL 33040 (305) 293-0466 Fox (305) 293-0237

Oceanside Residential Condominium

SURVEYOR'S CERTIFICATE

FILE #1392075 BK#1924 PG#514

THIS CERTIFICATION made the 12th, day of July, 2003, by the undersigned Professional Land Surveyor and Mapper authorized tp practice in the State of Florida, is made pursuant to the previsions of Section 718.04 (4) (E) of the Florida Statute effective January 1, 1977, as amended and certifies that the forgoing sketches and floor plans marked Exhibit B, together with wording of the Declaration of Condominium is an accurate representation of the location and dimensions of the PROPOSED IMPROVEMENTS to the land according to the plans and specifications, and that there can be determined therefrom the identification, location, dimensions and size of the common elements and of each condominium unit therein. There may exist some variance, between the proposed improvements and the

That the improvements represented hereon are proposed and have not been constructed and must be inspected, measured, and re-certified upon "substantial" completion in accordance with the provisions of Florida Statute 718.104.

That the architectural plans used in the preparation of this Exhibit B, were prepared by Gonzalzes Architects, Key West, Florida.

Elevations shown are relative to the National Geodetic Vertical Datum of 1929.

FREDERICK W. HILDEDKAND

Frederick H. Hildebrandt, P.E.,PLS

Professional Land Surveyor & Mapper No.2749

Professional Engineer No 36810

State of Florida

Sheet 21 of 21

Oceanside Residential Condominium 5950 Pennisular Avenue, Key West, Florida 33040 CONDOMINIUM SUBVEY Dwn No

U1 " 20/ Scale: 1"=20" Flood panel No. 1736 Dwn. By: F.H.H. 4/21/01 Flood Elev REVISIONS AND/OR ADDITIONS

6/4/01: Name, cert 7/12/03: Unit Numbers 8/7/01: L.C.E.

1)/24/02 Revise Boundary, Mean High Water Line twa/stockisland/aceanside

FREDERICK HII DERDANDT CHURNEER PLANNER SURVEYOR

> 3150 Northeide Drive Suite 101 Key West, FI. 33040 (305) 293-0466 Fox: (305) 293-0237

EXHIBIT C TO DECLARATION OCEANSIDE RESIDENTIAL CONDOMINIUM

ARTICLES OF INCORPORATION

OF

OCEANSIDE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC

The undersigned, by these Articles, hereby form this not-for-profit corporation under the laws of the State of Florito Chapter 718, Florida Statutes, and certify as follows:

ARTICLE I

The name of the corporation shall be Oceanside Residential Condominium Association, Inc. For convenience, the Corporation shall be referred to in this instrument as "the Association."

ARTICLE II PURPOSES AND POWERS

The Association does not contemplate pecuniary gain or profit to the members thereof. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the condominium units and common elements within that certain Condominium more particularly described in the Declaration of Condominium for Oceanside Residential Condominium (hereinafter, "the Declaration of Condominium"), and to promote the health, safety and welfare of the residents within the Condominium and any additions. In order to effectuate these purposes, the Association shall have the power to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration of Condominium, which powers and privileges include but are not limited to the following:

- 1. to fix, levy, collect and enforce payment by any lawful means all appropriate charges or assessments;
- to pay all expenses incident to the conduct of the business of the Association, including all licenses, (axes and governmental charges levied or imposed against the Common Elements;
- to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of the Common Elements on behalf of the membership of the Association;
- to borrow money and mortgage, pledge or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred;
- 5. to participate in mergers and consolidations with other non-profit corporations organized for the same purposes; and
- to have and to exercise any and all powers, rights and privileges which a corporation organized under the Florida Not-for-Profit Corporation Law may now or hereafter have or exercise.

ARTICLE III MEMBERSHIP AND VOTING

- A. Membership. Every person or entity who is a record owner of any Unit in the Condominium shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Change of membership in the Association shall be established by recording in the Public Records of Florida, a deed or other instrument establishing a record title to any Unit in a transferee and the delivery to the Association of a certified copy of such instrument. Upon such delivery, the transferee designated by such instrument shall become a member of the Association and the membership of the transferee shall be terminated.
- B. Appurtenance to Unit. The share of a member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- C. Voting Rights. Each Owner shall be entitled to one vote for each Unit owned. When more than one person holds an interest or interests in any Unit, the vote for such Unit shall be limited to one vote as the Owners among themselves determine. The manner of exercising voting rights shall be determined by the By-Laws of the Association.
- D. Meetings. The By-Laws shall provide for meetings of the members.

ARTICLE IV BOARD OF DIRECTORS/ADMINISTRATORS

- A. Membership of Board. The affairs of this Association shall be managed by a Board consisting of the number of Directors (sometimes referred to as "Administrators") determined by the By-Laws, but not fewer than three (3) Directors.
- B. <u>Election and Removal</u>. Directors shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the By-Laws.
- C. First Board of Directors/Administrators. The names and addresses of the persons who shall act in the capacity of Directors (Administrators) until their successors shall be elected and qualified are as follows:

NAME	ADDRESS
Douglas G. Walker	5950 Peninsular Avenue Key West, Florida 33040
Roger P. Greene	5950 Peninsular Avenue Key West, Florida 33040
Ann M. Rozelle	5950 Peninsular Avenue Key West, Florida 33040

The Administrators named above shall serve until the first election of Administrators, as determined by the By-Laws and any vacancies in their number occurring before the first election of Administrators shall be filled by act of the remaining Administrators.

ARTICLE V OFFICERS

The affairs of the Association shall be administered by the Officers designated in the By-Laws. After the first election of Administrators, the Officers shall be elected by the Board at the first Board meeting following the annual meeting. Administrators shall serve at the pleasure of the Board. The names and addresses of the officers who shall serve until their successors are designated by the Board are as follows:

Douglas G. Walker

5950 Peninsular Avenue
Key West, Florida 33040

Roger P. Greene

5950 Peninsular Avenue
Key West, Florida 33040

Ann M. Rozelle

5950 Peninsular Avenue
Key West, Florida 33040

Ann M. Rozelle

5950 Peninsular Avenue
Key West, Florida 33040

Treasurer.

Key West, Florida 33040

ARTICLE VI INDEMNIFICATION

- A. Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that Indemnitee is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or 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 Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- B. Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- C. Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection A or B, or in defense of any claim, issue, or manner therein, Indemnitee shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- D. <u>Determination of Applicability.</u> My indemnification under subsection A or subsection B, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because Indemnitee has met the applicable standard of conduct set forth in subsection A or subsection B. Such determination shall be made:
 - By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such proceeding;
 - If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which Directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
 - 3. By independent legal counsel:
 - (a) Selected by the non-party Board of Directors or committee prescribed above; or
 - (b) If a quorum of the non-party Directors cannot be obtained and the non-party Committee cannot be designated as provided above (in which Directors who are parties may participate); or
 - By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- E. <u>Determination Regarding Expenses.</u> Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in thesame manner as the determination that indemnification is permissible however, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph D. I shall evaluate the reasonableness of expenses and may authorize indemnification.

- F. Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if Indemnitee is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.
- G. Exclusivity: Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:
 - A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his
 conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
 - 2. A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
 - Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the
 right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the
 Association.
- H. Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.
- I. Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:
 - The director, officer, employee, or agent is entitled to mandatory indemnification under subsection C, in which case
 the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered
 indemnification or advancement of expenses;
 - The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection G; or
 - 3. The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection A, subsection B, or subsection G, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that Indemnitee did not act in good faith or acted in a manner Indemnitee reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contenders or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which Indemnitee reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

4

- Definitions. For purposes of this Article, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer, the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.
- K. Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article VI shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE VII BY-LAWS

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

ARTICLE VIII AMENDMENTS

Amendments to the Articles of Incorporation may be considered at any regular or special meeting of the members and may be adopted in the following manner:

- 1. Notice of the subject matter of a proposed amendment and of the meeting at which a proposed amendment is considered, and said notice shall be made as required by the By-Laws.
- 2. A resolution for the adoption of a proposed amendment may be proposed either by the Board or by a majority of the voting members. Administrators 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. Such amendments must be approved by not less than sixty-seven (67%) percent of the votes of the voting members.

ARTICLE IX TERM

The term of the Association shall be perpetual.

ARTICLE X DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than seventy-five percent (75%) of the voting members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication shall be refused acceptance, such assets shall be granted, conveyed and assigned to any Florida profit or Florida non-profit corporation to be devoted to such similar purposes.

ARTICLE XI SUBSCRIBERS

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

Douglas G. Walker

5950 Peninsular Avenue Key West, Florida 33040 Roger P. Greene

5950 Peninsular Avenue Key West, Florida 33040

Ann M. Rozelle

5950 Peninsular Avenue Key West, Plorida 33040

ARTICLE XII MISCELLANEOUS

- A. <u>Developer's Rights</u>. No amendment of these Articles of Incorporation or the By-Laws shall change Developer's rights and privileges as set forth in the Declaration of Condominium without Developer's prior written approval so long as Developer owns any Unit.
- B. Stock. The Association shall issue no shares of stock of any kind or nature whatsoever.
- C. Severability. Invalidation of any one or more of the provisions hereof shall in no way affect any other provisions, which shall remain in full force and effect.
- D. Principal Office: Registered Office and Registered Agent. The initial principal office shall be 5950 Peninsular Avenue, Key West, Florida 33040. The initial registered office of the Association shall be c/o John R. Allison, III, 100 S.E. Second Street, Suite 3350, Miami, Florida 33131. The initial registered agent at that address shall be John R. Allison, III.

IN WITNESS WHEREOF, the subscribers have affixed their signatures this ______ day of March, 2003.

Douglas G. Walker

Roger P. Greene

Ann M. Rozelle

STATE OF FLORIDA

) SS.

COUNTY OF MONROE

BEFORE ME, the undersigned authority, a notary public, authorized to administer oaths in the State of Florida, personally appeared Douglas G. Walker, Roger P. Greene and Ann M. Rozelle, who () are personally known to me to be the individuals described in, or () who produced Florida driver's licenses for identification, and they did not take an oath.

SWORN and subscribed to before me this // day of March, 2003.

IOTARY PUBLIC, State of Florida

at Large

My Commission Expires:

VICKI L. HELWIG

VICKI L. HELWIG

Commission # DD0087657

Expires 3/22/2008

Bonded through

Florida Notary Assn., inc.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above-named corporation at the place designated in these Articles, I hereby agree to act in such capacity and agree to comply with the provisions of all applicable statutes concerning the proper and complete performance of my duties.

John R. Allison, II

Dated:

12.28.00

TO FIRME

EXHIBIT D TO DECLARATION
OCEANSIDE RESIDENTIAL CONDOMINIUM

BY-LAWS OF OCEANSIDE RESIDENTIAL CONDOMINIUM ASSOCIATION, INC.

ARTICLE I: IDENTITY

A. Scope.

These By-Laws shall apply to Oceanside Residential Condominium Association, Inc. ("the Association"), a corporation not for profit under the laws of the State of Florida, organized for the purpose of administering that certain condominium located in Monroe County, Florida, and known as Oceanside Residential Condominium ("the Condominium"). These By-Laws expressly are subject to the terms, provisions, conditions and authorizations contained in the Articles of Incorporation and in the Declaration of Condominium ("the Declaration"). All of the terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration, unless herein provided to the contrary, or unless the context otherwise requires. Whenever the context so permits, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders.

Compliance.

Each present and future owner and tenant, guest, licensee, servant, agent, employee and any other person who shall be permitted to use the facilities of the Condominium or a unit shall comply strictly with these By-Laws and the Rules and Regulations issued by the Association and with the covenants, conditions and restrictions set forth in the Declaration and the deed to the unit. Ownership, rental or occupancy of any unit conclusively shall be deemed to mean that the owner, tenant or occupant has accepted and ratified these By-Laws and the Rules and Regulations of the Association and will comply with them. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the Association on behalf of the unit owners.

C. Principal Office.

The principal office of the Association shall be 5950 Peninsular Avenue, Key West, Florida 33040, or at such other place as may be subsequently designated by the Board of Administration. All books and records of the Association shall be kept at its principal office.

D. Seal.

The seal of the Association shall bear the name of the Association, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation. An impression of the Seal is as follows:

E. Fiscal Year.

The fiscal year of the Association shall be the calendar year.

ARTICLE II: MEMBERS

A. In General.

The requirements and procedures for admission, voting and termination of membership set forth in the Articles of Incorporation are incorporated herein by reference.

B. Voting.

1. Number of Votes. In any meeting of members, the members shall be entitled to cast one voting interest ("vote") for each unit owned. The vote of a unit shall not be divisible. Should two (2) or more units be used by a single owner as one (1) dwelling unit, by combining the same in a manner approved by the Board or as otherwise provided in the Declaration such use shall not in any manner affect or destroy the separateness of such units for voting purposes.

- 2. <u>Majority Vote</u>. The acts approved by a majority of the votes at a meeting at which a quorum shall be present, shall be binding upon all members for all purposes except where otherwise provided by law, the Declaration, the Articles or these By-Laws. The terms "majority of the members" or "majority of the Voting Interests" shall mean those members having more than fifty percent (50%) of the total authorized votes of all members voting at any meeting of the members at which a quorum shall be present.
- Designation of Voting Member. If a unit is owned by more than one person, or is under lease, the person entitled to cast the vote for the unit shall be designated by a Voting Certificate signed by all of the record owners of that unit according to the roster of members and filed with the Secretary of the Association. If a unit is owned by a corporation, the person entitled to cast the vote for the unit shall be designated by a Voting Certificate signed by the president or vice president and attested by the secretary or assistant secretary of the corporation and filed with the secretary of the Association. The person so designated to cast the vote of the unit shall be known as the "voting member." If such a Voting Certificate is not on file with the secretary for a unit owned by more than one person or one business entity, the vote of the unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the unit, except to such unit as owned by a husband and wife. Such Voting Certificate shall be valid until revoked or superseded by a subsequent Voting Certificate, or until a change in the ownership of the unit concerned.

A husband and wife owning a unit jointly shall have the following options:

- They may designate a voting member.
- b. If they do not designate a voting member and 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. If they do not designate a voting member and only one is present at a meeting, the spouse who is present may cast the unit vote without establishing the concurrence of the absent spouse.
 - d. If both spouses are present at a meeting and concur, either one may cast the unit vote.
- 4. Quorum. Members holding the voting interests for at least fifty-one percent (51%) of the units shall constitute a quorum.
- 5. Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote and shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. No proxy shall 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 member executing it. A proxy must be written, signed by the voting member generating the proxy and filed with the secretary before the appointed time of the meeting. Proxies shall in no event be used in electing the board of administration, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise permitted by the Condominium Act.

C. Meetings.

- 1. Annual Meetings. The annual meetings of the members shall be held on the second Tuesday of February of each year or on the date as determined by the Board from time to time, provided that there shall be an annual meeting every calendar year and not later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be to elect Administrators and to transact any other business which properly comes before the meeting.
- 2. Special Meetings. Special meetings of the members shall be held whenever called by the president or by a majority of the Board or as provided in paragraphs II(c)(3) and III(f), below. A special meeting must be called by the president if a majority of the members file a written request with the secretary. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.
- Budget Meetings. Any meeting at which a proposed annual budget of the association will be considered by the board or unit owners shall be open to all unit owners. At least 14 days prior to such a meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association by the unit owner, a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the

association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the association. If the board adopts in any fiscal year an annual budget which requires assessments against unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Unit owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

- 4. <u>Location of Meetings</u>. All annual and special meetings shall be held at the principal office of the Association or at such other suitable and convenient place as may from time to time be fixed by the Board and designated in the notices of such meetings.
- Notices of Meetings. Notices of meetings of members stating the time and place and the objects for which the meeting is called shall be given by the president or secretary. All notices shall be given to members in accordance with the requirements of F.S. 718.112, as amended from time to time. The secretary shall provide an affidavit, to be included in the Official Records of the Association, affirming that notices of meetings were mailed or hand-delivered as required herein to each unit owner at the address appearing on the roster. Any member may waive in writing notice of any specific meeting; such waiver, when filed in the records of the Association, shall be deemed equivalent to the receipt of such notice by such member. If any meeting cannot be organized because a quorum has not attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended (whenever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws or the Declaration), the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

D. Conduct of Meetings.

- 1. The president, or in his absence, the vice president, shall preside at all meetings; in the absence of both of them, the presiding officer shall be the officer designated by the Board.
- 2. After calling the meeting to order, the order of business at annual meetings and, as far as practical, at other meetings shall be:
 - a. Collection of election ballots as required by Rule 61B-1B-23.0021(10)(a) F.A.C., as amended from time to time;
 - b. Election of chairman of the meeting;
 - Calling of the roll and certifying of proxies;
 - d. Proof of notice of the meeting or waiver of notice;
 - e. Reading and disposal of any unapproved minutes;
 - f. Reports of officers;
 - g. Reports of committees;
 - Appointment of inspectors of election;

- i. Determination of number of Administrators;
- j. Election of Administrators;
- k. Unfinished business;
- New business;
- m. Adjournment.

Limitations of Membership.

Except as otherwise provided, membership in the Association shall be limited to the unit owners or co-owners. In the event that a member shall lease or permit another to occupy his unit, the tenant or occupant shall not vote in the affairs of the Association except as the member shall permit the tenant or occupant to exercise the proxy vote of the member. Every transfer of title to the member's unit, in accordance with the Declaration and the Condominium Act, shall include membership in the Association, and upon making such transfer, the previous owner's membership shall terminate automatically. Except as herein provided, membership in the Association may not be assigned or transferred and any attempted assignment or transfer thereof shall be void and of no effect.

ARTICLE III: BOARD OF ADMINISTRATION

Authority and Composition.

The affairs of the Association shall be governed by a Board of Administration consisting of three (3) persons. In order to be eligible for board membership, a person must meet the requirements set forth in the Declaration. Except for members of the Board eligible to be appointed by the Developer, all Board members must be owners of a Unit or an officer, director, partner or other designated person of a Unit owned by an entity other than a natural person. A person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for board membership.

Representation.

When members other than Developer own fifteen percent (15%) or more of the units in the Condominium, such members shall be entitled to elect not fewer than one-third (1/3) of the persons on the Board of Administration. Unit owners shall be entitled to elect not fewer than a majority of the Administrators upon the occurrence of the first of the following events:

- 1. Three (3) years after fifty percent (50%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;
- 2. Three (3) months after ninety percent (90%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;
- 3. When all the units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others is being offered for sale by Developer in the ordinary course of business;
- 4. When some of the units have been conveyed to purchasers and none of the others is being constructed or offered for sale by Developer in the ordinary course of business; or
 - Seven years after recordation of the Declaration.

Developer shall have the right to elect a majority of the Administrators until the occurrence of any of the above events. Developer shall be entitled to elect at least one (1) Administrator as long as Developer holds for sale in the ordinary course of business at least five percent (5%) of the units in the Condominium.

The rights reserved to Developer to elect and maintain Administrators may be assigned to and exercised by Developer's successor(s) in interest.

Election Procedures, Generally.

All Administrators not chosen by Developer shall be elected at the annual meeting of the members of the Association immediately following Developer's election of Administrators. Member-elected Administrators shall be elected in the following manner:

- 1. A search committee of three (3) members may be appointed by the Board not less than seventy-five (75) days prior to the annual meeting of the members. The committee may encourage qualified persons to become candidates for the Board but shall not have the authority to nominate any candidate.
- 2. The election shall be by ballot or voting machine (unless dispensed with in accordance with the Chapter 718 of the Florida Statutes, as amended from time to time) and by a plurality of the votes cast. Each person voting shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.
- 3. All voting procedures shall be in accordance with F.S. 718.112(2)(d), as amended from time to time.

D. <u>Vacancies</u>.

Vacancies in the Board may be filled, until the date of the next regularly scheduled election for any position, regardless of whether the Board seat to which the member was appointed or elected is scheduled to be filled at that election. If, however, upon appointment, the Association has already mailed or delivered the first notice of election pursuant to Section 112(2)(d)3., Florida Statutes, the Board Member appointed or elected as provided in these bylaws shall serve until the next election scheduled in the future for any position. Provided, however, should any vacancy in the Board be created in any position previously filled by a person elected by Developer, such vacancy shall be filled by Developer electing by written instrument delivered to any officer of the Association.

E. Terms of Office.

The term of office of each Administrator, whether elected by Developer or by the membership, shall be for one (1) year, expiring at the next annual meeting of the membership, or when successors are duly elected and qualified, or any shorter period in the event of removal in the manner provided herein or by law.

F. <u>Removals</u>

Subject to the provisions of Section 718.112(2)(j), Florida Statutes, 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 the Voting Interests. A special meeting of the unit owners to recall a member or members of the Board may be called by 10 percent 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.

1. If the recall is approved by a majority of all Voting Interests by a vote at a meeting, the recall will be effective as provided herein. The Board shall duly notice and hold a board meeting within 5 full business days of the adjournment of the unit owner meeting to recall one or more Board members. At the meeting, the Board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within 5 full business days any and all records and property of the Association in their possession, or shall proceed as set forth in subparagraph 3.

- 2. If the proposed recall is by an agreement in writing by a majority of all Voting Interests, the agreement in writing or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by chapter 48, Florida Statutes and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a meeting of the Board within 5 full business days after receipt of the agreement in writing. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within 5 full business days any and all records and property of the Association in their possession, or proceed as described in subparagraph 3.
- 3. If the Board determines not to certify the written agreement to recall a member or members of the Board, or does not certify the recall by a vote at a meeting, the Board shall, within 5 full business days after the meeting, file with the Division of Condominiums a petition for arbitration pursuant to the procedures in Section 718.1255, Florida Statutes. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. Any member or members so recalled shall deliver to the Board any and all records of the Association in their possession within 5 full business days of the effective date of the recall.
- 4. If the Board fails to duly notice and hold a board meeting within 5 full business days of service of an agreement in writing or within 5 full business days of the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all records and property of the Association.
- 5. If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in these bylaws. If vacancies occur on the Board as a result of a recall and a majority or more of the Board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the Division of Condominiums.

G. Meetings.

- 1. Organizational Meeting. The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such time and at such place as shall be fixed at the meeting at which they were elected.
- 2. 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 Board.
- 3. Special Meetings. Special meetings of the Board may be called by the president, and must be called by the secretary at the written request of any two (2) Administrators.
- Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members 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 nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed or delivered to the Unit Owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice 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 notices an be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to the owner of each Unit. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.
- 5. Meetings Open to Members. All meetings of the Board, whether regular or special, shall be open to members. Adequate notice of all meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance of each meeting, except in an emergency. Notice of any meeting in which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

- 6. Quorum. A quorum at a Board meeting shall consist of the Administrators entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the votes present at a meeting in which a quorum is present shall constitute acts of the Board, except as specifically provided otherwise in the Articles of Incorporation, these By-Laws or the Declaration. If any meeting cannot be organized because a quorum has not attended, the Administrators who are present may adjourn the meeting from time to time until a quorum is present. Any adjourned meeting must be properly re-notice pursuant to requirements of these By-Laws.
- 7. Conduct of Meetings. The Chairman of the Board, if one has been elected, shall preside over all Board meetings; otherwise the president shall preside. In the absence of the presiding officer, the Administrators present shall designate one of their number to preside. The order of business at Board meetings shall be:
 - a. Calling of roll;
 - Proof of due notice of meeting;
 - Reading and disposal of any unapproved minutes;
 - d. Reports of officers and committees;
 - e. Election of officers;
 - f. Unfinished business;
 - g. New business;
 - h. Adjournment.

H. Compensation.

Compensation of the Administrators, if any, shall be determined by the members of the Association.

Powers and Duties.

All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law and statutes, the Articles of Incorporation of the Association, these By-Laws and the Declaration. Such powers and duties shall include the following:

- 1. To determine, make, levy and collect assessments from members to defray the costs of the Condominium, and to use the proceeds of such assessments in the exercise of the powers and duties granted to the Association:
- 2. To maintain, repair, replace, operate and manage the Condominium and the Condominium Property wherever the same is required to be done and accomplished by the Association for the benefit of its members;
- 3. To reconstruct improvements after any casualty, and to further improve the property, real and personal;
- 4. To make, amend and enforce regulations governing the use of the property, real and personal, in the Condominium, so long as such regulations or amendments thereto do not conflict with the restrictions and limitations placed upon the use of such property under the terms of the Articles of Incorporation and the Declaration;
 - 5. To maintain bank accounts for the Association;
- 6. To purchase, sell, lease or otherwise acquire or convey units in the name of the Association or its designee(s);
 - 7. To obtain and review insurance for the Association;
- 8. To acquire and enter into leases and agreements of every nature, whereby the Association acquires leaseholds, memberships and other possessory or use interests in lands or facilities, including recreational and

communal facilities, whether or not contiguous to the lands of the Condominium, to provide enjoyment, recreation, or other use or benefit to the members, or as may be deemed by the Board to be in the best interests of the Association, and further including any and all contracts with Developer and/or its successors in interest furnishing services to the Condominium and its members for compensation, subject to such conditions and limitations as the Association and Developer shall deem appropriate.

First Board of Administration.

The first Board shall be comprised of three (3) persons designated to act and serve as Administrators in the Articles of Incorporation, who shall serve until their successors are elected at the first annual meeting of the members of the Association called after the Declaration has been duly recorded. The undertakings and contracts authorized by the first Board shall be binding upon the Association in the same manner as though such had been authorized by the first duly elected Board, so long as such undertakings and contracts are within the scope, powers and duties which may be exercised by the Board in accordance with all applicable Condominium documents. Should any member of the first Board be unable to serve for any reason, the remaining members of the Board shall have the right to designate a party to act and serve as Administrator for the unexpired term of the Administrator unable to serve.

ARTICLE IV: OFFICERS

Enumeration.

The Board shall elect a president, secretary and treasurer, and as many vice presidents, assistant secretaries and assistant treasurers as the Board shall determine. The president shall be elected from among the membership of the Board and shall be an Administrator, but no other officer need be a member or Administrator. The same person may hold two offices, except for the following combinations: (1) president and vice president; (2) president and secretary or assistant secretary.

B. <u>Election</u>.

The officers shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office until their successors have been elected and qualified.

C. The President.

The president shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

D. The Vice President.

The vice president shall, in the absence or disability of the president, exercise the powers and perform the duties of president. He also generally shall assist the president and exercise such other powers and perform such other duties as shall be prescribed by the Board.

The Secretary and Assistant Secretary.

The secretary shall: (1) keep the minutes of all proceedings of the Administrators and the members; (2) attend to the giving and serving of all notices to the members and Administrators, and such other notices required by law; (3) maintain custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed; (4) keep the records of the Association, except those of the treasurer; and (5) perform all other duties incident to the office of secretary and as may be required by the Administrators or president. The assistant secretary shall perform the duties of secretary when the secretary is absent. The minutes of all meetings of members and the Board shall be kept by the secretary in a book which shall be available for inspection by members (or their authorized representatives), and the Administrators at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

F. The Treasurer.

The treasurer shall: (1) have custody of all of the property of the Association, including funds, securities and evidences of indebtedness; (2) keep the assessment rolls and accounts of the members; (3) keep the books of the Association in accordance with good accounting practices; and (4) perform all other duties incident to the office of the treasurer.

Compensation.

There shall be no compensation for officers and directors of the Association unless the same is approved by a majority of the members of the Association. This provision shall not preclude the Board from employing an Administrator as an employee or from contracting with Administrators for the management of the Condominium.

H. Removal.

Any officer may be removed from office at any time, with or without cause, by a majority vote of the Board.

ARTICLE V: FINANCE

Bank Accounts.

The depository of the Association shall be such bank as is designated from time to time by the Board. Withdrawal of paid monies from accounts shall be only by checks signed by such persons as are authorized by the Board.

B. Fiscal Year.

The fiscal year shall be the calendar year.

C Budget.

The Board shall adopt a budget for each fiscal year which shall contain cost estimates, including without limitation the following items:

- 1. Expenses for the Association and Condominium
 - a. Administration and Personnel
 - b. Management Fees
 - c. Maintenance
 - d. Rent for recreational and other commonly used facilities
 - e. Taxes upon Association property
 - f. Taxes upon leased areas
 - g. Insurance Liability
 - h. Security provisions
 - I. Other expenses, e.g., office expenses, accounting fees, postage
 - j. Operating Capital
 - k. Reserves
 - l. Fees payable to the Division

2. Expenses for a Unit Owner:

- a. Rent for the Unit, if subject to a lease
- b. Rent payable by the Unit Owner directly to the lessor or agent under any recreational lease or lease for the commonly used facilities.

In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not 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 \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The foregoing does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required hereunder. However, prior to turnover of control of an association by the developer to unit owners other than a developer pursuant to Section 718.301 of the Condominium Act, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer pursuant to Section 718.301 of the Condominium Act, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

A copy of the proposed budget, together with proposed assessments payable by each member, and written notice of the time and place of the meeting to consider the budget shall be submitted to each member at least fourteen (14) days prior to the meeting at which the budget will be considered. The meeting shall be open to all members. As long as 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 year's assessment without the approval of a majority of all unit owners. If the budget is amended before the assessments are made, a copy of the amended budget shall be furnished to each member. Failure to deliver a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery be a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as restricting the right of the Board, at any time, in its sole discretion, to levy any additional assessment if the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management or if required by any emergencies.

D. Reviews.

A review of the accounts of the Association shall be made annually. Such review shall be made by an accountant licensed by the state of Florida, and a copy of such accountant's report shall be furnished to each member not later than March 15th of the year following the year for which the report is made.

E. <u>Assessments</u>.

Assessments against the members for their share of the items of the budget shall be made for the calendar year in advance on or before December 20th, preceding the year for which the assessments are made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and the yearly installment for such assessments shall be due on the twentieth day of December of the year preceding the year for which the assessments relate until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board. Charges by the Association against members for other than common expenses also shall be payable in advance. Charges for other than common expenses may be made only after approval of the members or when expressly provided for in the Declaration or Exhibits annexed thereto. Such charges may include charges for the use of the Condominium Property or recreation area, maintenance services furnished at the expense of a member and other services furnished for the benefit of a member. Assessments for common expenses or emergencies that cannot be paid from the annual assessment shall be due only after thirty (30) days' notice is given to the members concerned, and shall be paid in such manner as the Board may require.

If a member shall be in default in the payment of an installment upon an assessment, the Board may accelerate the remaining installments of the assessments upon notice to the member (and filing of a claim of lien in the case of acceleration of more than three months of assessments), and the then unpaid balance of the assessment shall be due upon the filing of the claim of lien in the public records of the County.

F. Fidelity Bonds.

Fidelity bonds shall be required by the Board for all persons who control or disburse funds of the Association in amounts not less than required under the Act. The premiums on such bonds shall be paid by the Association.

ARTICLE VI: INDEMNIFICATION OF ADMINISTRATORS AND OFFICERS

Every Administrator and every officer shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been an officer or Administrator, or any settlement thereof, whether or not he is an Administrator or officer at the time of incurring such expenses or liabilities, except in such cases wherein the Administrator or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to all other rights to which such officer or Administrator may be entitled.

ARTICLE VII: ARBITRATION

Mandatory nonbinding arbitration of internal disputes arising from the operation of the Condominium among the unit owners shall be required pursuant to Sections 718.112(2)(k) and 718.1255, Florida Statutes, and the rules promulgated pursuant thereto.

ARTICLE VIII: PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the laws of the State of Florida.

ARTICLE IX: RULES AND REGULATIONS

Annexed hereto and made a part hereof are rules and regulations concerning the use of the Condominium. The Board may from time to time modify, amend or add to such rules and regulations, except that owners of a majority of the units present and voting at a meeting at which a quorum is present may overrule the Board with respect to any such modification, amendment or addition. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board to each member at least thirty (30) days prior to the effective date hereof.

ARTICLE X: AMENDMENTS

A. Proposal.

Amendments to these By-Laws may be proposed by the Board acting upon majority vote or by members owning at least one-third (1/3) of the Voting Interests in the Condominium, whether meeting as members or by a writing signed by them.

B. Text of Proposed Amendments.

No By-Law shall be amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws 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 By-Law. See By-Law ______ for present text."

C. Special Meeting.

Such proposed amendment(s) shall be transmitted to the president (or other officer in the absence of the president) who shall thereupon call a special joint meeting of the Board and the membership for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt of such officer of the proposed amendment(s). The secretary shall give to each member written notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as herein set forth.

D. Approval and Recordation.

In order for such amendment(s) to become effective, the same must be approved by an affirmative vote of at least two-thirds (2/3) of the Voting Interests in the Condominium. Thereupon such amendments) shall be transcribed, certified by the president and Secretary, and a copy thereof recorded in the Public Records of Monroe County, Florida, within ten (10) days from the date of approval of such amendment(s) by the members.

E. Written Votes.

At any meeting held to consider such amendment(s), the written vote of any member shall be recognized even if such member is neither in attendance nor represented by proxy, provided that such written vote is delivered to the secretary at or prior to such meeting.

F. Writing in Lieu of Meeting.

In the event that the members holding the Voting Interests necessary to pass any amendment(s) shall execute any instrument amending these By-Laws, the same shall constitute a valid amendment and it shall not be necessary for the meeting otherwise prescribed above to be held. A copy of such amendment(s), bearing the signature of the member(s), and certified by the president and the secretary as being the amendment(s) so adopted by such members, shall be recorded in the Public Records of Monroe County, Florida, within ten (10) days from the date of approval of such amendment(s).

G. Nonmaterial Errors.

Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

Developer's Rights.

Notwithstanding the foregoing provisions, no amendment to these By-Laws to abridge, amend or alter Developer's rights herein may be adopted or become effective without Developer's prior written consent.

ARTICLE XI: COMPLIANCE; DEFAULT

A. <u>Compliance, Generally.</u> Each owner, tenant and occupant of a Unit shall comply with the provisions of the Declaration, the Articles of Incorporation and this By-Laws of the Association. Failure to comply therewith shall be grounds for

relief sought by the Association which may include an action for damages, injunctive relief, foreclosure of lien or any combination of the foregoing.

- B. No Waiver. The failure of the Association or of a Unit Owner to enforce any rights, provisions, covenant or condition which may be granted by the Declaration or other Condominium documents shall not constitute a waiver to enforce such rights, provisions, covenant or condition in the future.
- C. Fines. The Association may levy a reasonable fine against a Unit and/or Unit Owner for the failure of the Unit Owner of the Unit, the Unit's occupant, or the Unit Owner's lessee, licensee, or invitee to comply with the Declaration (including its exhibits and amendments) and/or the Rules and Regulations promulgated by the Association from time to time. No such fine levied by the Association shall exceed the maximum amount provided by any applicable Florida law. Each day of violation shall be deemed a separate violation subject to separate fine. The hearing shall be held before a committee of other Unit Owners appointed by the Board. If the committee does not agree with the fine, the fine may not be levied. The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of at least fourteen (14) days, which notice shall include:
 - 1. A statement of the date, time and place of the hearing;
 - 2. A statement of the provisions of the Declaration of Condominium, By-Laws or Rules and Regulations which have allegedly been violated; and
 - 3. A short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied 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.

- D. <u>Cumulative Remedies</u>. All rights, remedies and privileges granted to the Association or the Unit Owners pursuant to any terms, provisions, covenants or conditions of the Declaration or other Condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available at law or in equity.
- E. <u>Certificate of Compliance</u>. A certificate of compliance from a licensed contractor or electrician may be accepted by the Association's board as evidence of compliance of the condominium units to the Condominium Fire and Life Safety Code.

THE FOREGOING was adopted as the By-Laws of Oceanside Residential Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida on the 13th day of March, 2003.

ATTEST:

Sacratary

11

President

01/30/01 Adopted 03/13/03 MONROE COUNTY OFFICIAL RECORDS