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CERTIFICATE OF AMENDMENT  
TO  
DECLARATION OF CONDOMINIUM  
OF

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ARBOR LAKE CONDOMINIUM NO. 3 ASSOCIATION, INC.

600

I, Thomas F. Kryszewski, President of the Arbor Lake Condominium No. 3 Association, Inc., do hereby certify that the following Amendment to the Association Declaration was approved by a special meeting of the Board of Administrators and adopted by vote of at least a majority of the members of the Association as required by the by-laws of Arbor Lake Condominium No. 3 Assn., Inc. at a duly authorized meeting of members on March 7, 1990.

ATTEST: ARBOR LAKE CONDOMINIUM NO. 3 ASSOCIATION

Cara Roman

Secretary

Thomas F. Kryszewski 3/12/90

President

STATE OF FLORIDA  
COUNTY OF LEE

On this 19th Day of March 1990, personally appeared Thomas F. Kryszewski, President, and acknowledges the execution of this instrument for the purposes herein expressed.

Joyce S. Robbins  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES APR 16, 1993  
BONDED THRU GENERAL INS. UND.

GR 1850 PG 4114

RECORD VERIFIED - CHARLIE GREEN, CLERK  
BY: H. FERNSTEIN, D.C.

Section 3, Paragraph 3.3 of the Condominium Declaration and By-Laws are amended to read as follows:

3. Members

3.3 Notice of Meeting; Waiver of Notice

Notice of a meeting of members stating the time and place and the purpose(s) for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) nor more than sixty (60) days prior to the date of the meeting. Proof of posting shall be given by Affidavit, and proof of mailing of the notice shall be given by retention of ~~post-office-receipts~~ certificate of mailing.

NOTE: Words underlined are additions to the existing text, hyphenated words are deletions.

THIS INSTRUMENT PREPARED BY:

ARBOR LAKE CONDOMINIUM NO. 3 ASSOCIATION  
15216 FOXLAKE DRIVE  
N. FORT MYERS, FL 33917

DECLARATION OF

ARBOR LAKE CONDOMINIUM NO. 3

29700

LENNAR HOMES, INC., a Florida corporation, (hereinafter called the "Developer") does hereby declare as follows:

1. Introduction and Submission.

- 1.1 The Land. The Developer owns the fee title to certain real property located in Lee County, Florida, as more particularly described in Exhibit "1" attached hereto (the "Land").
- 1.2 Submission Statement. The Developer hereby submits the Land and, except as otherwise provided herein, all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, less and except as defined in this Declaration, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.
- 1.3 Name. The name by which this condominium is to be identified is: ARBOR LAKE CONDOMINIUM NO. 3 (hereinafter called the "Condominium").

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

- 2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as hereafter renumbered.
- 2.2 "Articles" means the Articles of Incorporation of the Association.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which, from time to time, is assessed against the Unit Owner.
- 2.4 "Association" means Arbor Lake Condominium No. 3 Association, Inc., a not-for-profit Florida corporation, the entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6 "Property Owners Association" means the Foxmoor Lakes Association, Inc., a Florida corporation not-for-profit, the entity responsible for the maintenance and operation of the Recreational Facilities and other Common Areas as defined in the Declaration of Covenants and Restrictions.
- 2.7 "Building" means the structure or structures in which the Units are located on the Condominium Property.
- 2.8 "By-Laws" means the By-Laws of the Association.
- 2.9 "Common Elements" means and includes:
  - (a) The portions of the Condominium Property which are not included within the Units;
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and Common Elements;

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BY: J. TURNER, D.C.

(c) An easement of support in every portion of the Unit which contributes to the support of the Building;

(d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;

(e) Any other parts of the Condominium Property designated as Common Elements in the Declaration.

(f) Common Elements includes Limited Common Elements unless the context otherwise requires.

2.10 "Limited Common Elements" means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units as specified in this Declaration.

2.11 "Common Expenses" means all expenses incurred and Assessments (and Special Assessments levied against all of the Units of the Condominium) by the Association for the Condominium and shall include:

(a) Expenses of administration and management of the Condominium Property.

(b) Expenses of taxes, insurance, maintenance, operation, repair and replacement of Common Elements, Limited Common Elements, and of the portions of the Units, if any, to be maintained by the Association.

(c) Costs and expenses of capital improvements, betterments and additions to the Common Elements.

(d) Expenses declared Common Expenses by the provisions of this Declaration or by any instrument annexed as an Exhibit hereto.

(e) Any valid charge against the Condominium Property as a whole.

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

2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit, and when the context permits, the term includes all other appurtenances to the Unit.

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

2.15 "Foxmoor Lakes Development" or "Development" refers to the entire group of Condominiums which the Developer shall construct or has constructed together with the real property and improvements thereon; and the additional real property and improvements thereon described in the Declaration of Covenants and Restrictions for Foxmoor Lakes.

2.16 "Developer" shall mean and refer to Lennar Homes, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such a partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

- 2.17 "Improvements" means all structures and artificial changes to the natural environment (exclusive of landscaping) on the Condominium Property, including but not limited to, the Building.
- 2.18 "Management Contract" means and refers to that certain agreement which provides for the management of the Condominium Property.
- 2.19 "Management Firm" means and refers to the corporation, its successors and assigns, identified as the Management Firm in the Management Contract. The Management Firm shall be responsible for the management of the Condominium Property as provided in the Management Contract.
- 2.20 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.21 "Unit Owner" or "Owner of a Unit" means the Owner of a Condominium Parcel.
- 2.22 "County" shall mean Lee County, Florida.
- 2.23 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage banker, real estate or mortgage investment trust, pension fund, Developer, GNMA, FNMA, FHLMC, VA, FHA, or any other lender, or its loan correspondent or agency of the United States Government, holding, guaranteeing or insuring a first mortgage on a Unit or Units.
- 2.24 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually, which includes any such additional sums which may be assessed directly against one or more Unit Owners (though not necessarily against other Unit Owners).
- 2.25 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns at any time first mortgages encumbering Units which secure a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.26 "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.
- 2.27 "Voting Interest" means the voting rights distributed to the Association members pursuant to the Act and Section 5 of this Declaration.

3. Description of Condominium.

3.1 Identification of Units. The Land has constructed thereon two (2) Buildings containing a total of eight (8) Units each. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on Exhibit "3" attached hereto. Exhibit "3" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located and a plot plan thereof. Said Exhibit "3", together with this Declaration is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with a Unit, appurtenances thereto; (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically, and (d) other appurtenances as may be provided in this Declaration. Time-share estates will not be created with respect to any Unit in the Condominium.

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

(a) Upper and lower boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(i) Upper boundaries. The horizontal plane of the unfinished lower surface of the ceiling.

(ii) Lower boundaries. The horizontal plane of the unfinished upper surface of the floor.

(b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior of the walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries.

3.3 Limited Common Elements. Each Unit shall have, as Limited Common Elements appurtenant thereto:

(a) Patios and Balconies. Each Unit shall have either a patio or balcony abutting it for the exclusive use of the Unit Owner owning such Unit. The Unit Owner shall be responsible for maintenance and care of the patio or balcony, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. A Unit Owner may not enclose exterior patios or balconies without the prior written consent of the Management Firm, if applicable, and the Board of Directors of the Association.

(b) Storage Space and Utility Space. Storage space and/or Utility Space is located within each patio or balcony area and shall be used exclusively by the Unit Owner entitled to make exclusive use of said patio or balcony.

(c) Air conditioner condensing unit. If located within the Condominium Property, each Unit Owner shall be responsible for the maintenance and care of the air conditioner condensing unit.

(d) Mailboxes. If located within the Common Elements, each Unit shall be entitled to the exclusive use of one (1) mailbox which the Developer shall assign to the Unit at closing.

(e) Automobile Parking Spaces. The automobile parking spaces shall be Limited Common Elements of the Units with respect to which space or spaces are assigned.

(i) Assigned Spaces for Units.

Each Unit shall be entitled to the exclusive use of one (1) parking space which the Developer shall assign to the Unit at closing. Thereafter, the Board of Directors of the Association shall be empowered to change said assignments, provided the Unit Owners affected by such change consent thereto, and provided that no changes may be made without the prior consent of the Developer so long as the Developer owns any Units. Assignments (or changes in assignments) made pursuant to this subsection (i) shall be in writing (but not recorded in the Public Records) with a copy furnished to the Board of Directors.

(ii) Nature of Assignment.

An assignment of any parking space grants only the exclusive use thereof as a Limited Common Element appurtenant to the particular Unit and does not convey any title thereto. Any transfer, or subsequent assignment as contemplated above, shall operate to transfer only the exclusive use of such space(s). Except as provided specifically in subsection (i) above, the space(s) assigned to the Unit pursuant to such subsection (i)

shall not be assignable except together with the applicable Unit and the form of Assignment given by the Developer shall so note. In the event a Unit Owner leaves his space(s) vacant while he is away from the Unit for an extended period, the Association shall be entitled to allow other persons to use said space(s) while they remain vacant.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act).

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services and drainage in order to serve the Condominium. 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 or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property.

(c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

(d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and Occupant, their respective guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this Subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) shall automatically be subordinate to, the rights of Unit Owners with respect to such easements. In addition, there is hereby created a non-exclusive easement in favor of all of the Owners of residential Units, residents and their guests and invitees in the Development for ingress and egress over that portion of the Common Elements designated for vehicular and pedestrian traffic and referred to as the Common Driveway in the Declaration of Covenants and Restrictions for Foxmoor Lakes, so as to provide reasonable access throughout the Development.

(e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its and their sole discretion, from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, of any Improvements or Unit located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so, provided such activity does not

prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the Condominium Property.

(f) Sales Activity. For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales offices, to show model apartments and the Common Elements to prospective purchasers and tenants of the Units, and to erect on the Condominium Property signs and other promotional material to advertise Units and certain Limited Common Elements for sale or lease.

(g) Developer's Warranty. For as long as Developer is liable under the terms of its Warranty in favor of the Unit Owners and Association, Developer, including its designees and Contractors shall have the right, in its and their sole discretion, from time to time, to enter the Condominium Property or any improvements or Units located thereon, for repair or replacement purposes and take all other action necessary or convenient for the purpose of fulfilling its obligations under the Warranty.

(h) Governmental Personnel. A right of entry over, through and across the Common Elements is hereby granted to law enforcement officers, fire and rescue personnel and sanitation personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access.

(i) Additional Easements. The Developer (so long as it owns any Units) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as their attorney-in-fact for this purpose), each shall have the right to grant such additional electric, gas, other utility or service or other easements, or relocate any existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operations and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes. The Association, subject to the prior consent of the Developer, which consent shall be required until December 31, 1993 or until Developer has conveyed title to the last Condominium Unit to be built in the Development, or such earlier time at the sole discretion of Developer, has the authority without the joinder of any Unit Owners, to grant, modify or move any easement subject to the provisions of the easement, if the easement constitutes part of or crosses the Common Elements.

4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, membership in the Association designated in this Declaration, with the full voting rights appertaining thereto, and except as provided herein, the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

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

5.1 Fractional Ownership and Shares. The undivided fractional interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses appurtenant to each Unit, is set forth in Exhibit "2" annexed hereto.

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

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

6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by affirmative vote of:

(a) Unit Owners owning in excess of 50% of the Units represented at any meeting at which a quorum has been attained and by not less than 66-2/3% of the Board of Directors of the Association; or

(b) Unit Owners owning not less than 80% of the Units represented at any meeting at which a quorum has been attained; or

(c) 100% of the Board of Directors; or

(d) Not less than 50% of the entire membership of the Board of Directors in the case of amendments to the section hereof entitled "Insurance" or other sections that are reasonably required insurers or the Primary Institutional First Mortgagee.

6.2 By the Developer. The Developer, during the time it is in control of the Board of Directors of the Association, may amend the Declaration, the Articles or the By-Laws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the reasonable opinion of the Developer, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing. Developer, in Section 10 hereof, has specifically reserved the right to change the size and/or number of Developer owned Units so long as the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of non-Developer owned Units do not change. Such a change will not materially adversely affect the property rights of Unit Owners, other than the Developer and, if necessary, the Developer may amend this Declaration and the exhibits thereto from time to time without the consent of any other Unit Owners to evidence the change in size and/or number of Developer owned Units. The execution and recording of any amendment by the Developer pursuant hereto shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded.

6.3 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording date identifying the Declaration and shall be



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executed in the form required for the execution of a deed. Amendments by the Developer must be evidenced in writing, but a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the Public Records of the County.

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

6.5 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance; or shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair After Casualty" or "Condemnation" unless all Institutional First Mortgagees whose mortgages are of record shall join in the amendment.

7. Maintenance and Repairs.

7.1 Units. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical, plumbing, heating and air-conditioning equipment, fixtures and outlets, if any, within the Unit or the Limited Common Elements or belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein, and shall be made in accordance with the original plans and specifications therefor or as otherwise directed by the Association. Additionally, each Unit Owner shall pay all charges for utility services metered directly to his Unit.

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

7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair the following specific items shall be responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, are Limited Common Elements or are Common Elements other than Limited Common Elements:

(a) Where a Limited Common Element consists of a terrace, balcony or patio, the Unit Owner who has the right to the exclusive use of said terrace, balcony or patio shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said area, if any, and the fixed and/or sliding glass door(s) in or other portions of the entrance way(s) of said area, if any, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any.

(b) Utility rooms.

7.4 Developer's Lien. In the event the Association fails to maintain, replace or repair as herein provided, upon thirty (30) days notice to the Association, the Developer or its designee shall have the right, without being obligated to do so, to enter upon the Condominium Property, and cause said maintenance, replacement, or repair to be made, and in such event, the Developer shall have a lien upon the Condominium Property, including all Units therein, for the costs thereof, including, without limitation, interest, court costs and reasonable attorneys' fees and appellate attorneys' fees incurred by the Developer in collecting the sums expended by it. The aforesaid lien may be foreclosed in the same manner as mortgages or statutory liens are foreclosed in Florida. In the event of an emergency situation, threatening the health and welfare of the residents, the Developer may immediately enter upon the Condominium Property and cause such maintenance replacements or repairs to be made forthwith and without the requirement of any prior notice thereof, and the Developer shall have an enforceable lien upon the Condominium Property as aforesaid.

7.5 Association's Lien. In the event any Unit Owner shall fail to maintain, replace and repair as herein provided, the Association, upon thirty (30) days written notice, shall have the right, without being obligated to do so, to enter upon the Unit and cause said maintenance, replacement or repair to be made, and in such event the Association shall have a lien upon the Condominium Parcel for the costs thereof including, without limitation, interest, court costs and reasonable attorneys' fees and appellate attorneys' fees incurred by the Association in collecting the sums expended by it. The aforesaid lien may be foreclosed in the same manner as mortgages or statutory liens are foreclosed in Florida.

7.6 Miscellaneous. All work performed on the Condominium Property or any portion thereof shall be in compliance with all applicable governmental building and zoning requirements. All plumbing and electrical maintenance, repairs, and replacements shall be made only by plumbers or electricians duly licensed and qualified to perform such services in Lee County, Florida.

8. Additions, Alterations or Improvements by the Association. Whenever, in the judgment of the Board of Directors, the Common Elements or any part thereof shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$500.00 or less in a calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements or any part thereof costing in the aggregate of \$500.00 or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses.

9. Additions, Alterations or Improvements by Unit Owners.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Elements without the prior written consent of the Board of Directors. The Board shall have the

obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance from and after that date of installation or construction thereof as may be required by the Association. Unless expressly permitted in writing by the Association, the installation of any floor covering, other than padded carpeting or well-padded vinyl tile, is prohibited. In any event, Unit Owners shall have the duty of causing thereto to be placed underneath such covering, so as to be between any such covering and the floor of the Unit, generally accepted and approved material for diminution of noise and sound, so that the floors shall be adequately soundproof according to general architectural and engineering standards presently observed in the community.

9.2. Additions, Alterations or Improvements by Developer. The foregoing restrictions of this Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and nonstructural, interior and exterior, 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 Improvements).

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 9.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or nonstructural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size and/or number of Developer-owned Units by subdividing one or more Developer-owned Units into two or more separate Units, combining separate Developer-owned Units (including those resulting from such subdivision or otherwise) into one or more Units or otherwise; and (iv) reapportion among the Developer-owned Units so affected by such change in size or number, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto, and provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to such Units provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this Section 10 may be effected by the Developer alone. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11. Operation of the Condominium by the Association; Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and By-Laws of the Association (respectively, Exhibits "4" and "5" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the rules and regulations adopted pursuant to such documents, as the same may be amended from time to time.

(b) The power to make and collect Assessments and other charges and surcharges against Unit Owners and to lease, maintain, repair and replace the Common Elements.

(c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

(d) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Condominium Act, including but not limited to the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.

(f) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses. No actions authorized hereunder, however, may be taken without prior consent of Developer as long as the Developer owns any Units.

(g) The power to adopt and amend rules and regulations covering the details of the operation and use of the Condominium Property.

(h) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with

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any provision of this Declaration, the By-Laws or the rules and regulations.

(i) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict between the powers and duties of the Association or otherwise, the Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

11.1 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair caused by the latent condition of the Condominium Property.

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

11.3 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for the Unit if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration or by law.

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

12. Determination of the Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expense shall include the expenses of the operation, maintenance, repair and replacement of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations, or by the Association. Except as provided by law, any reserve funds may be used as the Board shall determine from time to time and need not be restricted to replacements or otherwise. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws. Additionally any charges for cable television services and auxiliary services, if provided to all of the members of the Association, shall be deemed to be a Common Expense. The Board of Directors in determining the amount of the Assessments payable by the Unit Owners shall be authorized to include such charges in the

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estimated operating budget for the Condominium. Accordingly, the provisions contained in Section 13 of this Declaration with respect to the collection of Assessments shall be applicable to the charges for cable television services auxiliary services.

13. Collection of Assessments and Special Assessments.

13.1 Liability for Assessments and Special Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and Special Assessments coming due while he is the Unit Owner. Except as provided for in Section 13.5, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments and Special Assessments against the grantor for his share of the Common Expenses up to the time of transfer of title, without prejudice to any right of the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments and Special Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments and Special Assessments are made or otherwise.

13.2 Default in Payment of Assessments and Special Assessments for Common Expenses. Assessments, Special Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the due date until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments and Special Assessments on such Parcel, with interest and for reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessments and Special Assessments or enforcement of the lien. The lien is effective from and after recording a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record owner, the amount due and the due dates. No such lien shall continue for a longer period than one year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid Assessments, Special 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. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for unpaid Assessments and Special Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments and Special Assessments without waiving any claim of lien.

13.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, and other sums permitted hereunder are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by Certified Mail, Return Receipt REquested, addressed to the Unit Owner. If, after diligent search and inquiry, the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. If, after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act and shall not apply if an

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action to foreclose a mortgage on the Unit is pending before any court, if the Association rights would be affected by such foreclosure, and if actual constructive or substitute service of process has been made on the Unit Owner.

- 13.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 13.5 Institutional First Mortgagee. In the event an Institutional First Mortgagee shall obtain title to the Condominium Parcel by a purchase at a public sale resulting from the Institutional First Mortgagee's foreclosure judgment in a foreclosure suit in which the Association has been properly named as a defendant junior lienholder, or as a result of a deed given in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns, shall not be liable for the share of Common Expenses or Assessments or Special Assessments or other charges imposed by the Association attributable to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu thereof, unless such share is secured by a claim of lien that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Common Expenses or Assessments or Special Assessments or other charges shall be deemed to be Common Expenses, collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.
- 13.6 Developer's Liability for Assessments. (i) The Developer shall be excused from the payment of the share of the Common Expenses and Assessments relating to Units it is offering for sale, for a period beginning with the recording of this Declaration and ending the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit occurs. However, the Developer must pay the portion of Common Expenses incurred during that period which exceeds the amount assessed against other Unit Owners.
- (ii) During the period from the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit occurs, until the earlier of the date control of the Association is turned over to Unit Owners other than the Developer, or the last day of the calendar year in which the closing of the purchase and sale of the last Unit occurs (the "Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments attributable to Units it is offering for sale, provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over the amount set opposite such Unit's designation (model type) in the Estimated Operating Budget contained in the Offering Circular (Prospectus) delivered to such Unit Owner when such Owner contracted to purchase the Unit, if applicable; and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level receivable from Unit Owners.
- (iii) No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget contained in the Offering Circular (Prospectus) delivered to such Unit purchaser or Owner when such Unit purchaser or Owner contracted to purchase the Unit, if applicable, shall be used for payment of Common Expenses prior to the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit occurs. This restriction shall apply to funds including, but not limited to, capital

contributions or start-up funds collected from Unit purchasers at closing.

- 13.7 Possession of Unit. Any person who acquires an interest in a Unit, except Institutional First Mortgagees through foreclosure or a first mortgage of record (or deed in lieu thereof), including, without limitation, persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other charges due and owing by the former Owner, if any, have been paid.
- 13.8 Certificate of Unpaid Assessments. The Association shall provide a certificate stating all Assessments, Special Assessments, and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel, within 15 days after request by a Unit Owner or Institutional First Mortgagee.
- 13.9 Installments. Assessments or Special Assessments may be collected monthly or quarterly in advance, at the option of the Association, from time to time.
- 13.10 Special Assessments. The specific purpose or purposes of any Special Assessment approved in accordance with this Declaration, Articles or By-Laws shall be set forth in a written notice of such Special Assessment sent or delivered to each Unit Owner. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice, or returned to the Unit Owners. However, upon completion of such specific purpose or purposes, any excess funds shall be considered Common Surplus.

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

14.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described, shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and at their own discretion 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.

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

(a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units initially installed, or replacements thereof, of like kind or quality in accordance with the original plans and specifications therefor, but excluding all furniture, furnishings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners) and all Improvements located on the Common Elements from time to time, together with all service machinery contained therein (collectively, the "Insured Property"), shall be insured in an amount not less than 100% of the full insurance replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

(i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

(ii) Such other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$300,000 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.

(c) Worker's Compensation and other mandatory insurance, when applicable.

(d) Flood Insurance, if required by the Primary Institutional First Mortgagee or if the Association so elects.

(e) Fidelity Insurance covering all directors, officers and employees of the Association and managing agents who handle Association funds, if any.

(f) 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) the clause that reserves to the insurer the right to pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more Unit Owners.

14.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees or Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or other competent appraiser, of the full insurance replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the

purpose of determining the amount of insurance to be effected pursuant to this Section.

14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or their appurtenances or of the Common Elements by particular Unit Owners shall be assessed against and paid by such Owners. Premiums may be financed in such manner the Board of Directors deems appropriate.

14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by 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 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 County, The Insurance Trustee (if appointed) 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 (if appointed) 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 which shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in subparagraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively, the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

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

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof,

remittances to Unit Owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

(d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

14.8 Unit Owners Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by insurance carried by the Association.

14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

14.10 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.

15. Reconstruction or Repair After Fire or Other Casualty.

15.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty unless 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is destroyed or substantially damaged and Unit Owners owning 80% or more of the applicable interests in the Common Elements elect not to proceed with repairs or restoration and the Primary Institutional First Mortgagee approves such election, 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 the Primary Institutional First Mortgagee approves such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in

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

- 15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.
- 15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair (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.
- 15.4 Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.
- 15.5 Special Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs of reconstruction and repair are insufficient, Special Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Special Assessments on account of damage to the Insured Property shall be in proportion to all of the Owner's respective shares in the Common Elements, and on account of damage to the Optional Property, in proportion to the cost of

repairing the damage suffered by each Owner thereof, as determined by the Association.

15.6 Construction Funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee (if appointed) and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. If the total Assessments made by the Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Association are more than \$10,000.00 then the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee (if appointed). In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

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

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$50,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$50,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to do the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established,

such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that party 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 to any mortgagee.

(v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) 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 (if appointed), nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, not to determine the payees nor the amounts to be paid. The Insurance Trustee (if appointed) may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

15.7 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. Condemnation.

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a Special Assessment shall be made against a defaulting Unit Owner in the Amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determination whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain shall also be deemed to be a casualty.

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of the insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

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

(a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the

additional funds required shall be assessed against the Owner of the Unit.

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

(c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

(i) Add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

(ii) Divide each percentage for each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage balance.

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

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

(a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagee in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments and Special Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

(b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

(c) The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:

(i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof (the "Percentage Balance"); and

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

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

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

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

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

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

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

17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

17.1 Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner



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or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of that Unit (as described below), as the case may be.

Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, (iii) a partner or employee of a partnership, lessee or sublessee; or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

Under no circumstances may more than one family reside in a Unit at one time. "Families" or words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers, sisters, children and grandchildren. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this subdivision 17.1 shall not be applicable to Units used by the Developer for model apartments, sales offices, other offices or management services.

- 17.2 Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them of these restrictions and all rules and regulations of the Association. All children under fourteen (14) years of age must be accompanied by a responsible adult when entering and/or utilizing the recreational facilities and comply with the rules and regulations of the Property Owners Association with respect to same.
- 17.3 No pets shall be allowed in any Unit or the Common Elements except, each Unit shall be allowed to house one (1) dog or one (1) cat, so long as said dog or cat weighs forty (40) pounds or less when full grown. Each Unit may also house domestic birds or fish. Pets shall be kept within a Unit and not be permitted on any portion of the Condominium Property except when adequately secured and restrained by a leash, where applicable, and all such pets shall be walked in such areas designated by the Association so as to control the deposit of animal waste on the Condominium Property. No guests or invitees of an Owner shall be permitted to bring animals of any kind on the Condominium Property. No animals shall be allowed to commit a nuisance in any public portion of the Condominium Property. The term "pet" shall be limited to a dog, cat, fish or small domestic birds. Dogs may not be kept in Limited Common Elements the Owner is not in the Unit. Each Unit Owner owning a pet shall assume full responsibility for personal injuries or property damage caused by his pet, and each Unit Owner hereby agrees to indemnify the Association and all other Unit Owners and hold them harmless against any loss, claim or liability of any kind whatsoever arising from or growing out of any harm, injury or damage caused by such Unit Owner's pet. Without limiting the generality of Section 18 hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property upon three (3) days' notice.
- 17.4 Alterations. Without limiting the generality of Section 9.1 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery or air-conditioning units or in any manner changing the appearance of any portion of the Building without obtaining the prior written consent of the Association (in the manner specified in Section 9.1 hereof).
- 17.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are

reasonably suited and which are incident to the use and occupancy of Units.

17.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to resident or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.

17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinance and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any portion of the Condominium Property, shall be corrected by and at the sole expense of the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. No waterbeds are to be brought into the Units for any reason whatsoever.

17.8 Leases. No portion of a Unit (other than an entire Unit) may be rented. All leases shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association. Leasing of Units shall also be subject to the prior written approval of the Association and the Association may reject the leasing of any Unit on any grounds the Association elects. No lease shall be for a term of less than six (6) months. Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a sum to be determined by the Association which may be used by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum 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. Any balance remaining in the escrow account, less an administrative charge determined by the Association, shall be returned to the Unit Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out.

17.9 Exterior Improvements; Landscaping. Without limiting the generality of Section 9.1 or 17.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies, or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association.

17.10 Effect on Developer; Association. The restrictions and limitations set forth in this Section 17 shall not apply to the Developer or to Units owned by the Developer. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown.

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

18.1 Right of First Refusal. Any Unit Owner who receives a bona fide offer to purchase or lease his Unit (such offer to purchase or lease a Unit, as the case may be, is called an "Outside Offer"; the party making any such Outside Offer is called an "Outside Offeror";

and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept shall give notice by registered mail to the Board of Directors of the receipt of such Outside Offer. Said Notice shall also state the name and address of the Outside Offeror, the term of the proposed transaction and such other information as the Board of Directors may reasonably require. The giving of such notice to the Board of Directors shall constitute and offer by such Unit Owner to sell his Unit or to lease his Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a Warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than twenty (20) days after receipt of such notice, together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said twenty (20) day period, by certified mail, to purchase such Unit or to lease such Unit as the case may be, upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner. In the event the Association shall timely elect to purchase such Unit or to lease such Unit, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within forty-five (45) days after the giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner, if such Unit is to be sold, shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title binder (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest, if any, and Common Expenses shall be apportioned between the Offeree Unit and the Association, or its designee, as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board of Directors or to its designee, a lease between the Offeree Unit Owner, as landlord, and the Association, or its designee, as tenant, covering such Unit, for the rental and term contained in such Outside Offer.

In the event the Association or its designee shall fail to accept such offer or, in the case of a lease, shall fail to reject the proposed lease as permitted by Section 17.8 hereof, within twenty (20) days after receipt of notice and all additional information requested, as aforesaid the Offeree Unit Owner shall be free to accept the Outside Offer within sixty (60) days after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such sixty (60) day period but such sale or lease, as the case may be, shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Unit Owner thereafter elect to sell such Unit or to lease such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this Section.

Any deed or lease to an Outside Offeror shall provide (or shall be deemed to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of the

Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations and all other agreements, documents or instruments affecting the Condominium Property or administered by the Association, as the same may be amended from time to time.

Any lease executed in connection with the acceptance of any Outside Offer to lease a Unit shall be consistent herewith and with the By-Laws and rules and regulations and shall provide specifically that (i) it may not be modified, amended, extended or assigned without the prior consent in writing of the Board of Directors, (ii) the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Board of Directors, and (iii) the Board of Directors shall have the power, but shall not be obligated, to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (a) a default by the tenant in the performance of its obligations to comply with the documents described in the preceding unnumbered paragraph under such lease, or (b) a foreclosure of the lien granted under the Act. Such lease shall also comply with the provisions of Section 17.8 hereof.

Except as hereinbefore set forth, the form of any such lease executed by the Association or an Outside Offeror shall contain such other modifications as shall be approved in writing by the Board of Directors. Any lease executed by the Association as tenant shall provide that the Association may enter into a sublease of the premises without the consent of the landlord.

Any purported sale or lease of a Unit in violation of this Section shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing), in the name of said Unit Owner as the purported landlord. Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

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

- 18.2 Consent of Unit Owners to Purchase or Lease of Units by the Association. The Association shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Owners or a majority of the Units present in person or by proxy and voting at a meeting at which a quorum has been obtained.
- 18.3 No Severance of Ownership. Except as elsewhere herein provided, no part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 18.4 Release by the Association of the Right of First Refusal. The right of first refusal contained in Section 18.1 may be released or waived by the Association only in the manner provided in Section 18.5. In the event the Association shall release or waive its right of first refusal as to any Unit, such Unit may be sold, conveyed or leased free and clear of the provisions of said Section 18.1.
- 18.5 Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by an officer of the Association stating that the provisions of Section 18.1 have been satisfied by

a Unit Owner, or stating that the right of first refusal contained therein has been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated. The certificate shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of such Section have, in fact, terminated or been waived.

18.6 Financing of Purchase of Units by the Association. The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.

18.7 Exceptions. The provisions of Section 18.1 shall not apply with respect to any lease, sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, children, parents, parents-in-law, siblings or a trustee, corporation or other entity where the Unit Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity, or to any one or more of the above, (b) the Developer, (c) the Association, (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or (e) an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.

18.8 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by and his Unit subject to, the provisions of this Section 18.

18.9 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.

18.10 Transfer Fees. The Association may, at its option, charge a transfer fee in connection with the furnishing of a certificate in accordance with Section 18.5 for the sale, lease or sublease of a Unit in connection with the Association's right of first refusal provided for in this Section 18; provided, however, if the lease or sublease is a renewal (or if a lease or sublease is with the same lessee or sublessee), no charge shall be made. The transfer fee may be preset by the Association but in no event shall it exceed the maximum amount allowed under the Act.

19. Compliance and Default. Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act.

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

19.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration,

the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to suspend voting rights in Association matters or use rights in recreational facilities, to assess the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to collect such Assessment and have a lien therefor as elsewhere provided. In addition, the association shall have the right, for itself and its employees and agents, to enter the Unit and perform the necessary work to enforce compliance with the above provisions (by force, if necessary), without having committed a trespass or incurred any other liability to the Unit Owner.

19.3 Costs and Attorneys Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees (including appellate attorneys fees) as may be awarded by the court.

19.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration and the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

20. Merger of Condominium.

The Condominium may be merged with one or more condominiums within the Development to form a single condominium upon (i) the approval of eighty (80%) percent of all the Unit Owners of this Condominium and eighty (80%) percent of all of the Unit Owners of such other condominium(s), (ii) the approval of all of the Institutional First Mortgagees and of all record owners of liens, and (iii) upon the recording of new or amended articles of incorporation, declaration(s) of condominium and by-laws.

21. Termination of Condominium.

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 75% of the applicable interests in the Common Elements (after 20% of the Units have been sold to Unit Owners other than the Developer, the Developer will not vote the Units owned by it for such withdrawal unless the Owners of at least 75% of all other applicable interests in the Common Elements so elect for such withdrawal, at which time Developer may choose to vote either in favor of or against withdrawal from Condominium ownership, as it sees fit), and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens of his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of the County. This section may not be amended without the consent of all Institutional First Mortgagees and the Developer so long as it owns any Unit.

22. Additional Rights of Institutional First Mortgagees.

In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right, upon written request to the Association, to:

- 22.1 Examine the Association's books and records; and require copies of the annual reports and other financial data;
- 22.2 Receive notice of Association meetings and attend such meetings;
- 22.3 Receive notice of an alleged default by any Unit Owner, for whom such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to such Unit Owner; and
- 22.4 Receive notice of any substantial damage or loss to any portion of the Condominium Property.

23. Execution of Documents Required by the City and County.

The Developer's plan for the development of the Development, as a community may require from time to time the execution of certain documents required by the City and/or County. To the extent that said documents require the joinder of any or all property owners in the Development, each of said Owners, by virtue of his acceptance of a deed to his Unit, does irrevocably give and grant to the Developer, or any of its officers individually, full power of attorney to execute said documents as his agent and in his place and stead.

24. Covenant Running With the Land.

All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time by such Unit Owner, tenant or occupant.

25. Reservation of Right to Own, Install, Provide and Maintain a Closed Circuit Television System, Telecommunications System, a Master Antennae System and Community Antennae Television System (CATV Service).

25.1 Developer reserves and retains to itself, its successors and assigns: (i) the title to any closed circuit television system, telecommunications system, master antennae system, and related ancillary services and to the equipment including but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment both active and passive (the "Central System") in and upon the Condominium Property and a perpetual easement for the placement and location of the Central System including, but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment, both active and passive, and (ii) a perpetual easement for ingress to and egress from the Condominium Property to service, maintain,

install, repair and replace the aforesaid apparatus and equipment; and (iii) the right to connect the Central System to such receiving source as Developer may in its sole discretion deems appropriate, including, without limitation, companies licensed to provide the CATV service in Lee County, for which service Developer, in its successors and assigns or designees shall have the right to charge the Association and/or individual Unit Owners a reasonable fee not to exceed the maximum allowable charge for CATV service to single family residences as charged within the general vicinity.

25.2 The Unit Owners acknowledge that the Central System described in Section 25.1 above, includes but is not limited to the CATV services as well as the ancillary services which may include security; medical, smoke and fire alert; information retrieval and so forth. Such Central System is offered as part of Developer's endeavor to provide a total environment to the Unit Owners and enhance the "way-of-life" at the Development.

26. Architectural Control and Maintenance Standards Committee.

26.1 Establishment of Committee and Acceptance by Unit Owners. The Condominium created by this Declaration is part and parcel of the Development, a multi-staged residential development. Each Unit Owner, by virtue of his acceptance of a warranty deed, acknowledges the necessity of maintaining the physical appearance and image of the entire Development as a quality residential community and additionally, that the success of the Developer in developing and selling the remaining portions of the Development is closely related to the physical appearance and image of the completed portions of the Development.

Accordingly, there is established a Committee known as the "Architectural Control and Maintenance Standards Committee" hereinafter referred to as "Committee" for a period terminating either on the thirty-first (31st) day of December, 1989, or the date that the last condominium association in the Development comes under the control of its Unit Owners by their election of that Association's Board of Directors or earlier at the option of Developer, whichever shall first occur. The Committee shall be empowered to adopt and promulgate from time to time minimum standards for architectural control and maintenance of the physical appearance of the Common Elements, not only of this Condominium, but of all other Condominiums in the Development. Additionally, the Committee will adopt standards for the Common Areas.

26.2 Members of Committee. The Committee shall consist of three (3) members designated by the Development. Each member of the Committee shall be appointed by the Developer and shall hold office until such time as he has resigned or has been removed and his successor has been appointed by the Developer. Members of the Committee may be removed at any time without cause by Developer. The membership may include building and landscape architects, contractors, subcontractors or other persons that the Developer may deem sufficiently qualified to render an opinion as to architectural standards and minimum standards of maintenance.

26.3 Repair of Proposed Construction. With respect to the Common Elements of this Condominium no building, exterior wall or other exterior structure shall be commenced, erected or maintained, nor shall any exterior painted surfaces be repainted, nor shall any exterior addition or change or alteration be made to the exterior of any building, nor shall there be any material modification of the landscaping until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing, as to harmony of external design and color and location in relation to surrounding structures and topography, by the Committee. The Committee shall approve proposals or plans and specifications only if submitted for its approval by the Association and only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance



of the entire Development, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures. The Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specification or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitations, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications the Committee may postpone review of any plans submitted for approval. Notwithstanding any provision of this Subsection, approval of the Committee shall not be required with respect to original construction performed or caused to be performed by Developer. In the event the Association proceeds with improvements without submitting plans to the Committee or submits plans to the Committee and proceeds without the approval of the Committee, the Committee shall have the right but not the duty to take such action as is set forth in subsection 6 of this Section 26 and any other remedies as be prescribed by law.

26.4 Maintenance and Repair Obligations. In the event any improvements to the Common Elements fall into disrepair or are not maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or otherwise violate this Declaration, the Committee has the right, but not the duty to take such action as is set forth in subsection 6 of this Section 26 and any other remedies prescribed by law. The obligations to maintain shall include but not be limited to exterior paint on any building, landscaping, paving, trash removal, repair of exterior building surfaces and vending machine maintenance.

26.5 Inspection. The Committee shall have the right to inspect from time to time the Common Elements of the Condominium in order to determine whether the maintenance standards, or improvements to the Common Elements are not in compliance with the architectural standards of the Committee, the Committee shall issue a report to the Developer particularly the deficiencies and the Developer shall thereafter submit the report to the Board of the Association. Within thirty (30) days of receipt of the report, the Association shall commence with the repair, maintenance or restoration specified in the report diligently pursue completion of same in an expeditious manner. The cost of all work shall be the responsibility of the Association and shall be a Common Expense of the Condominium.

Each Unit Owner and the Association do hereby authorize and vest in the Developer the following powers should the Association fail or refuse to commence and complete maintenance, repair or restoration required by the report of the Committee:

(a) The Developer may let out for bid the work required by the report of the Committee, negotiate and accept bids and authorize contractors or subcontractors to enter upon the Common Elements of the Condominium for the purpose of performing the specified work in which case the Developer shall be acting as the agent for the Association and the Unit Owners and the entrance upon the Common Elements of those performing the work shall be a lawful entry and shall not be deemed a trespass. Developer shall have the right to pay the contractors and subcontractors performing the work and the Developer is authorized in its own name to record a lien against the Condominium among the public records of Lee County, Florida in the amount of the cost of said work that the Developer has expended which lien shall be a lien against the Common Elements and Units of the Condominium for which the work was performed, which lien shall remain in effect until such time as it is satisfied of record by the payment to the Developer of the monies expended by it together with interest at the rate of eighteen (18%) percent per annum from the date of the expenditure. The recordation of the lien is hereby

deemed to constitute constructive notice to third parties of the existence of the lien and all sales, mortgages or other transfers or conveyances subsequent to the recording date shall be subject to the lien of the Developer. Each Unit Owner and the Association give and grant unto the Developer the power to foreclose its lien in the event that it remains unpaid and agree that the procedures to be utilized in said foreclosure proceeding shall be those set forth in the Statutes of the State of Florida relating to the foreclosure of a mechanic's lien and any and all defenses or right to contest are hereby waived.

(b) Alternatively, upon receiving the bids of contractors and subcontractors for the work required to be done by the report of the Committee, Developer may elect not to cause said work to be done, and notwithstanding that, to record the lien prescribed above in the amount of the bids of contractors and subcontractors for the work set forth in the Committee report. Upon payment of the lien to the Developer, the Developer shall then cause the work to be performed and to pay the contractors and subcontractors performing the work from the proceeds satisfying the lien. Upon payment of the contractors and subcontractors, Developer shall render to the Association a report setting forth to whom and what amounts the funds were disbursed. The lien herein prescribed shall have the same priority upon recordation and shall be foreclosed in the same manner as that set forth in subsection 26.6(a) of this Section.

The report of the Committee shall be conclusive as to the nature of the work required to be done and the bids accepted by Developer shall be conclusive as to price. The phrase "Common Elements" wherever it appears in this Section 26 shall be deemed to include the phrase "Limited Common Elements".

27. Property Owners Association.

Each Unit Owner shall automatically and immediately upon acquisition of title to a Unit become a member of the Property Owners Association. In addition to the provisions contained herein, this Declaration is subject to all of the terms, provisions and restrictions contained in the Foxmoor Lakes Declaration of Covenants and Restrictions recorded in the Public Records of Lee County in Official Records Book 1461 at Page 1395, and any and all amendments thereto, and to the Articles and By-Laws and amendments thereto of the Property Owners Association. As provided in the Declaration of Covenants and Restrictions, the Property Owners Association has the power to levy assessments from each Unit Owner for the maintenance, repair and replacement of certain recreational and other commonly used facilities to be owned and maintained by the Property Owners Association for the use of the Unit Owners in the Development.

Each Unit Owner, by virtue of taking title to his Unit, agrees that to secure his obligation to pay assessments to the Property Owners Association, it shall have a lien on his Unit and all tangible personal property located therein in this Condominium as provided in the Articles and By-Laws of the Property Owners Association and the Declaration of Covenants and Restrictions. Each Unit Owner, his heirs, successors and assigns, shall be bound by the Declaration of Covenants and Restrictions, the Articles and By-Laws of the Property Owners Association to the same extent and effect as if he had executed said documents for the purposes therein expressed.

28. Additional Provisions.

28.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other

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

- 28.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 28.3 Mortgagees. The Association shall not be responsible to any mortgagee or lienor of any Unit hereunder and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 28.4 Exhibits. There is hereby incorporated in this Declaration any materials contained in the Exhibits annexed hereto which under the Act are required to be part of the Declaration.
- 28.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 28.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 28.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association in its own name and/or on behalf of the Unit Owners unless same is approved by a vote of seventy-five percent (75%) of the Voting Interests of all of the Unit Owners. This Section shall not apply, however, to (i) actions brought by the association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) proceedings, or (iii) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of Section 6 of this Declaration, this Section shall not be amended unless such amendment is approved by the percentage of votes necessary to institute proceedings as provided above.
- 28.8 Construction Litigation. All Units and their appurtenant Common Elements have been or will be sold without any Developer's warranties whatsoever except as provided in the Act (to the extent such warranties are not effectively disclaimed and remain in full force and effect, if at all). As to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s) or the Common Elements including, without limitation, claims alleging negligent construction, failure to build in accordance with any particular plans or specifications or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that (i) the party or parties bringing same shall have first given notice to the Developer or other party against whom which relief or recovery is sought (the

"Defendant") of the specific Construction Matters complained of and what actions are necessary to cure or correct same, and (ii) the Defendant shall have been given at least forty-five (45) days (subject to extension by reason of matters beyond the control of the Defendant or because of the nature of the applicable Construction Matter(s) and shall have materially failed to do so. If any Construction Matter is not cured or corrected as aforesaid, all applicable parties shall be bound to submit the disputes or claims regarding the Construction Matters at issue solely to binding arbitration in accordance with the Florida Arbitration Code and the rules of the American Arbitration Association and the parties and their successors and assigns shall be bound by the results of such arbitration. Without limiting the general

binding effect of this Declaration, each Owner and other person acquiring any right, title or interest in or to any Unit shall be deemed, by virtue of the acceptance of the conveyance, grant, transfer or assignment thereof, to be fully bound by the provisions of this Section 28.8 and of Section 28.7 above, as shall the Association.

- 28.9 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 28.10 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 28.11 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations and reasonable in all material respects.
- 28.12 Execution of Documents; Attorney-In-Fact. Without limiting the generality of other sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer and its affiliates, to complete the plan of development of the Development (of which the Condominium is a part), as hereafter amended and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 28.13 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 28.14 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 27th day of May, 1986.

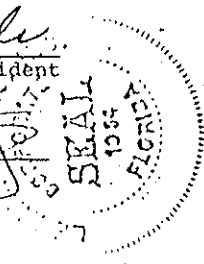
Signed, sealed and delivered in the presence of:

LENNAR HOMES, INC.

Janet S. English  
Carol M. Guster

By: M. E. Saleda  
M. E. SALEDA, Vice President

Attest: M. J. Watsky  
MORRIS J. WATSKY  
Assistant Secretary



(Corporate Seal)

ACKNOWLEDGEMENT

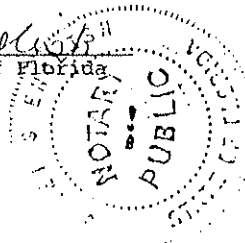
STATE OF FLORIDA  
COUNTY OF DADE

The foregoing Declaration of Condominium was acknowledged before me this 27th day of May, 1986 by M. E. SALEDA and MORRIS J. WATSKY, as Vice President and Assistant Secretary, respectively, of LENNAR HOMES, INC., a Florida corporation, on behalf of said corporation.

Janet S. English  
Notary Public, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. AUG 10, 1988  
BONDED THRU GENERAL INS. UND.



## ARBOR LAKES CONDOMINIUM NO. 3

## LEGAL DESCRIPTION

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Section 36, Township 43 South, Range 24 East, and further bounded and described as follows:

Starting at the southwest corner of the southeast one quarter (SE 1/4) of said Section 36; thence S89°21'53"E along the south line of the southwest one quarter (SW 1/4) of said southeast one quarter (SE 1/4) for 1329.09 feet to the southwest corner of the southeast one quarter (SE 1/4) of said southeast one quarter (SE 1/4); thence S89°19'42"E along the south line of said southeast one quarter (SE 1/4) of said southeast one quarter (SE 1/4) for 334.55 feet; thence N00°38'06"E for 366.11 feet; thence S88°49'41"E for 65.54 feet to the beginning of a curve concave to the south having a radius of 50.00 feet; thence easterly along said curve through a central angle of 17°07'55" for a radius of 123.00 feet; thence northeasterly along said curve through a central angle of 90°59'01" for 195.32 feet; thence N17°19'13"E for 113.84 feet; thence S71°45'05"E for 10.00 feet to the Point of Beginning of the herein described parcel; thence continue S71°05'05"E for 204.89 feet; thence S07°02'18"W for 47.31 feet; thence S03°42'46"W for 53.39 feet; thence S04°33'17"E for 53.89 feet; thence S01°44'55"E for 50.47 feet; thence S06°46'19"W for 52.57 feet; thence S17°45'04"W for 43.28 feet; thence S15°45'31"W for 5.40 feet; thence N43°55'47"W for 99.02 feet; thence S46°04'13"W for 32.00 feet; thence N43°55'47"W for 213.30 feet to an intersection with a curve concave to the northwest having a radius of 133.00 feet and to which intersection a radial line bears S43°55'47"E; thence northeasterly along said curve through a central angle of 28°45'00" for 66.74 feet; thence N17°19'13"E for 113.68 feet to the Point of Beginning.

Said parcel contains 1.36 acres, more or less.



ALLOCATION OF FRACTIONAL SHARES OF  
COMMON ELEMENTS, COMMON EXPENSES AND COMMON SURPLUS

Each Unit shall have as an appurtenance thereto the fractional share of the Common Elements, Common Expenses and Common Surplus set forth opposite such Unit below:

ARBOR LAKE CONDOMINIUM NO. "3"

BUILDING 10,015

<u>UNIT</u>	<u>FRACTIONAL SHARE</u>
1	1/16
2	1/16
3	1/16
4	1/16
5	1/16
6	1/16
7	1/16
8	1/16

BUILDING 10,016

1	1/16
2	1/16
3	1/16
4	1/16
5	1/16
6	1/16
7	1/16
8	1/16



SURVEYOR'S CERTIFICATE

I have examined the Declaration of Condominium and attached exhibits as it relates to survey matters only, including the "Plot Plan" of ARBOR LAKES CONDOMINIUM NO. 3, and I do hereby certify that the construction of the improvements described below is substantially complete so that the material describing the condominium property is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimension of the common elements of each unit can be determined from these materials. I further certify that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common facilities serving ARBOR LAKES CONDOMINIUM NO. 3, Building 10005, shown on attached site plan (dated 5-20-86), have been substantially completed and that such certification is to be recorded as an Exhibit to the Declaration.

By: William E. Bean  
Registered Land Surveyor 3261

STATE OF FLORIDA  
COUNTY OF LEE

BEFORE ME, the undersigned authority authorized to administer oaths and take acknowledgments, personally appeared William E. Bean, to me known to be the person described in and who executed the foregoing Surveyor's Certificate and he acknowledged before me that he executed the same freely and voluntarily for the uses and purposes therein expressed and set forth, and that he is over the age of twenty-one (21) years.

WITNESS my hand and official seal at Fort Myers in the County and State named above this 21 day of May, 1986.

Richard Cameron  
Notary Public

My Commission Expires:

F-124 NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. APR 22, 1989  
BONDED THRU GENERAL INS. CO.

# ARBOR LAKES CONDOMINIUM #3 A CONDOMINIUM

LYING IN SECTION 36, T-43-S, R-24-E, LEE COUNTY, FLORIDA.

SHEET 1 OF 7

Donald F. Smith & Associates, Inc.  
Civil Engineers and Surveyors  
10000 Highway 17, Suite 100  
Fort Myers, Florida 33907

### DESCRIPTION:

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Section 36, Township 43 South, Range 24 East, and further bounded and described as follows:

Starting at the southwest corner of the southeast one quarter (SE 1/4) of said Section 36; thence S89°21'53"W along the north line of the southeast one quarter (SW 1/4) of said southeast one quarter (SE 1/4) for 125.00 feet to the southeast corner of the southeast one quarter (SE 1/4) of said southeast one quarter (SE 1/4); thence S89°09'48"W along the south line of said southeast one quarter (SE 1/4) of said southeast one quarter (SE 1/4) for 131.55 feet; thence S00°35'06"E for 113.68 feet to the south station of a curve; thence easterly along said curve through a central angle of 17°07'52" for 14.95 feet to a point of reverse curve concave to the northeast having a radius of 323.00 feet; thence northeasterly along said curve through a central angle of 17°07'52" for 10.00 feet to the point of tangency; thence S71°55'00"E for 10.00 feet to the southeast corner of the herein described parcel; thence southerly S71°45'00"E for 20.15 feet; thence S07°02'18"W for 47.31 feet; thence S03°42'28"W for 50.17 feet; thence S06°42'10"W for 52.89 feet; thence S02°48'55"E for 50.17 feet; thence S71°55'00"E for 10.00 feet; thence S43°55'49"W for 83.28 feet; thence S15°45'13"W for 5.40 feet; thence S43°55'49"W for 95.02 feet; thence S46°04'13"W for 32.00 feet; thence S43°55'49"W for 413.30 feet to an intersection with a curve concave to the southwest having a radius of 130.00 feet; thence along said curve through a central angle of 28°45'00" for 66.71 feet; thence through a central angle of 113.68 feet to the Point of Beginning.

Said parcel contains 1.36 acres, more or less.

Subject to all easements, rights-of-way and restrictions of record.

### ROADWAY EASEMENT:

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF SECTION 36, TOWNSHIP 43 SOUTH, RANGE 24 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ONE QUARTER (SE 1/4) OF SAID SECTION 36; THENCE S 89° 21' 53" E ALONG THE SOUTH LINE OF SAID SECTION 36 FOR 125.00 FEET TO THE SOUTHWEST CORNER OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 36; THENCE S 89° 09' 48" E ALONG THE SOUTH LINE OF SAID SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 36 FOR 131.55 FEET TO THE POINT OF BEGINNING OF A CURVE; THENCE S 89° 49' 41" E ALONG THE CENTERLINE OF A ROADWAY 140.00 FEET WIDE; THENCE S 89° 49' 41" E ALONG SAID CENTERLINE FOR 65.54 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID CURVE AND POINT OF REVERSE CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 130.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 90° 59' 01" FOR 195.32 FEET; THENCE N 77° 19' 13" E ALONG SAID CENTERLINE FOR 350.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 130.00 FEET; THENCE ALONG SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 97° 38' 30" FOR 282.15 FEET; THENCE N 80° 39' 17" W ALONG SAID CENTERLINE FOR 150.00 FEET TO THE TERMINUS OF SAID ROADWAY.

THE SIDELINES OF SAID ROADWAY TO BE LENGTHENED OR SHORTENED TO PROVIDE A MINIMUM WIDTH OF 40.00 FEET.

### NOTES:

1. Bearings shown are taken from Old Bridge Square Condominium Plat, O. S. Book 1049, Page 311.
2. Elevations are based on National Geodetic Vertical Datum of 1988.
3. All exterior walls are 0.25 feet thick (3 1/2") unless otherwise shown.
4. All interior walls are 0.25 feet thick (3 1/2") unless otherwise shown.
5. All walls shown of all buildings and units unless otherwise shown herein are right angles.
6. All ties for building locations are 90° to the boundary line or wall to which they are attached.
7. Commencement of the building is shown by the unfinished perimeter wall and from the plane of the unfinished floor to the plane of the uncoated ceiling. All as is indicated herein, not including any existing utility lines, shall govern. The unit shall be constructed in accordance with the above.
8. All areas not within a unit are common areas and those portions of the common areas marked L.C.E. are limited to common areas for parking spaces will be assigned to unit owners by the developer or associated as limited common elements.
9. The use of all buildings is residential.
10. The developer reserves the right to grant easements for the common areas for utility lines, drainage, utility for recreation purposes and/or entrance, drainage, utility for recreation purposes.
11. The information above is subject to revision by final survey upon completion of the buildings and improvements.

### SURVEYOR'S CERTIFICATION:

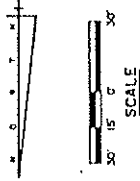
I HEREBY CERTIFY THAT THE CONSTRUCTION OF THE IMPROVEMENTS AS DESCRIBED HEREIN IS SUBSTANTIALLY IN ACCORDANCE WITH THE PLAT AND THE DECLARATION OF THE CONDOMINIUM DESCRIBING THE CONDOMINIUM PROJECT. IT IS AN ACCURATE REPRESENTATION OF THE LOCATIONS OF THE IMPROVEMENTS AND THE DIMENSIONS THEREOF AS DETERMINED FROM THESE MATERIALS.

*William S. Beak*  
WILLIAM S. BEAK, REGISTERED  
LAND SURVEYOR NO. 2161

THESE DRAWINGS PREPARED AS SURVEYOR'S EXHIBITS TO CONDOMINIUM DOCUMENTS.

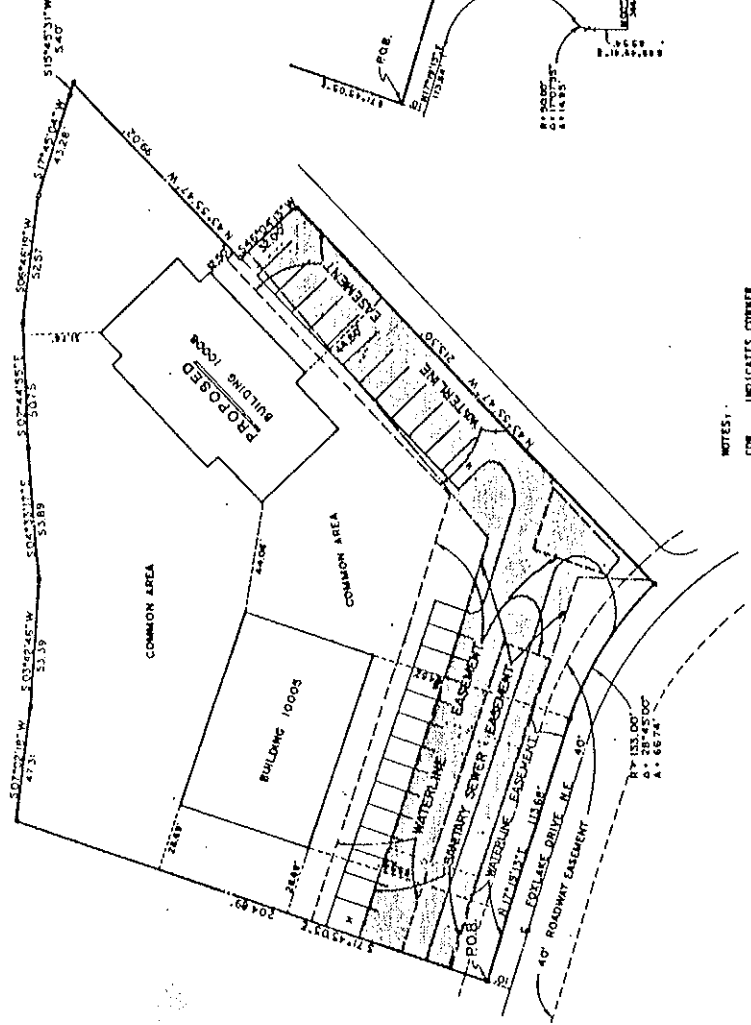
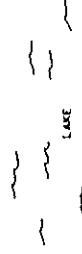
ALL OTHER UNITS PROPOSED AT THIS TIME.

Howard J. Parks & Associates, Inc.  
Civil Engineers  
1320 MacArthur Blvd., Ft. Lauderdale, Florida 33301  
Phone: (305) 555-1234



# ARBOR LAKES CONDOMINIUM #3 A CONDOMINIUM

LYING IN SECTION 36, T-43S, R-24E, LEE COUNTY, FLORIDA.



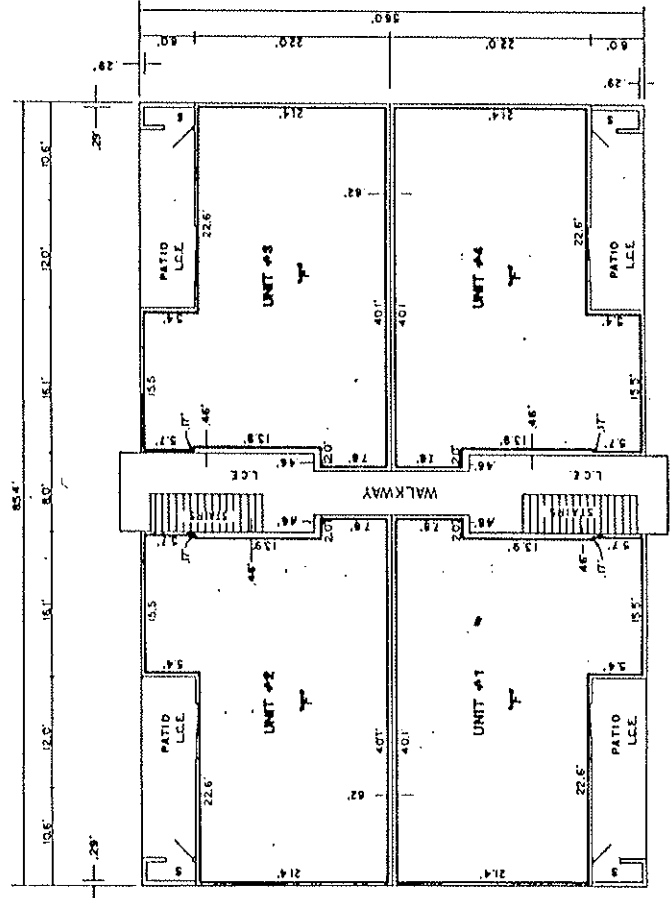
POINT OF COMMENCEMENT  
DETAIL  
N.T.S.

NOTES:  
C.W. INDICATES CORNER.  
S.W. INDICATES SETBACK ROD.  
P.O.B. INDICATES POINT OF BEGINNING.  
A. INDICATES ANGLE MEASUREMENT.

# ARBOR LAKES CONDOMINIUM #3 A CONDOMINIUM

LYING IN SECTION 36, T-43S, R-24 E, LEE COUNTY, FLORIDA.

Prepared by: **Frank B. Cunningham, Inc.**  
Contract No. **10000155**  
Date: **11/11/81**



FIRST FLOOR  
BUILDING #10005

NOTE:  
S INDICATES STORAGE AREA.

REVISED 5-20-86 TO SHOW CHANGES OF PATIO & ENTRANCE

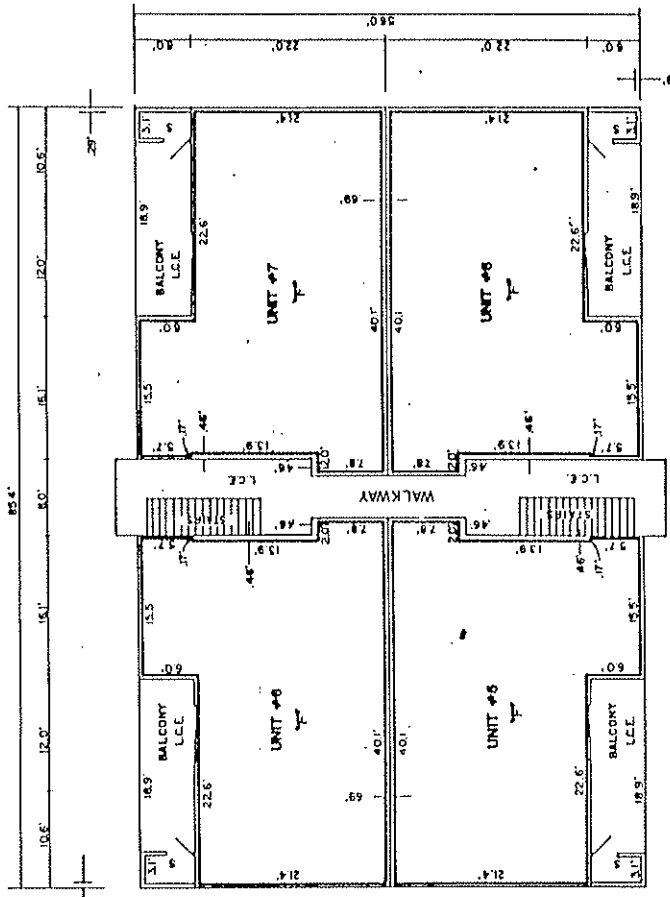
David F. Beck & Associates, Inc.  
Civil/Architectural and Surveying  
2225 Midway Ave., #1700  
Fort Myers, Florida 33901



# ARBOR LAKES CONDOMINIUM #3

A CONDOMINIUM

LYING IN SECTION 36, T-43S, R-24 E, LEE COUNTY, FLORIDA.



SECOND FLOOR  
BUILDING #10005

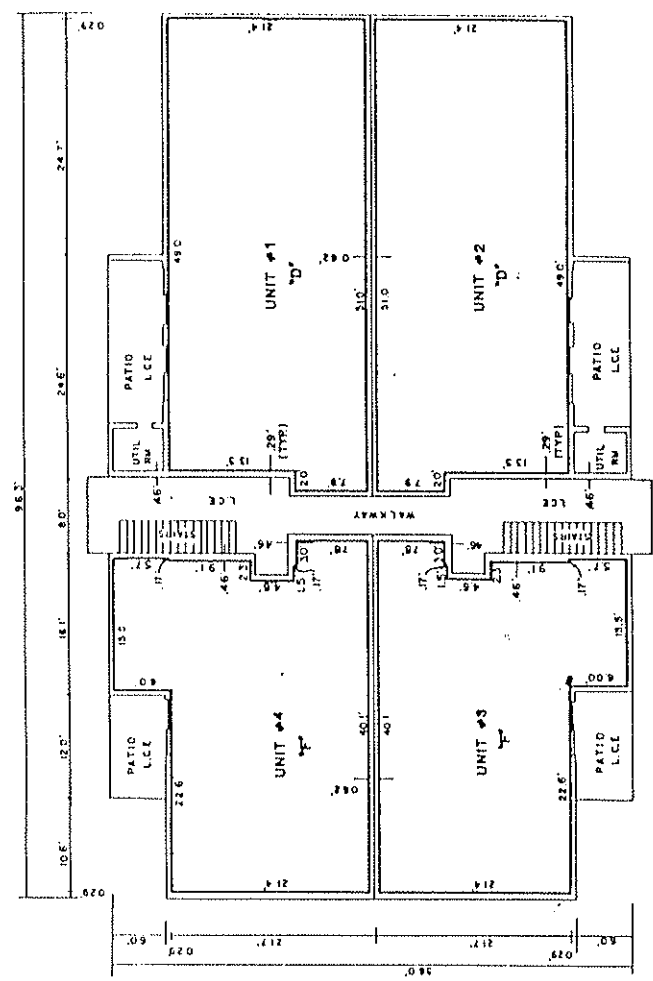
NOTE:  
S INDICATES STORAGE AREA.

REVISED 5-20-88 TO SHOW CHANGE OF BALCONY & ENTRANCE

Howard F. Davis & Associates, Inc.  
Civil Engineers and Surveyors  
6775 W. U.S. Highway 1  
Fort Myers, Florida 33907

SURVEYOR'S PLAT EXHIBIT ' ' TO CONDOMINIUM DECLARATION OF  
**ARBOR LAKES CONDOMINIUM #3**  
A CONDOMINIUM

LYING IN SECTION 36, T-43S, R-24E, LEE COUNTY, FLORIDA.



FIRST FLOOR  
BUILDING #10006

SURVEYOR'S PLAT EXHIBIT ' ' TO CONDOMINIUM DECLARATION OF  
**ARBOR LAKES CONDOMINIUM #3**

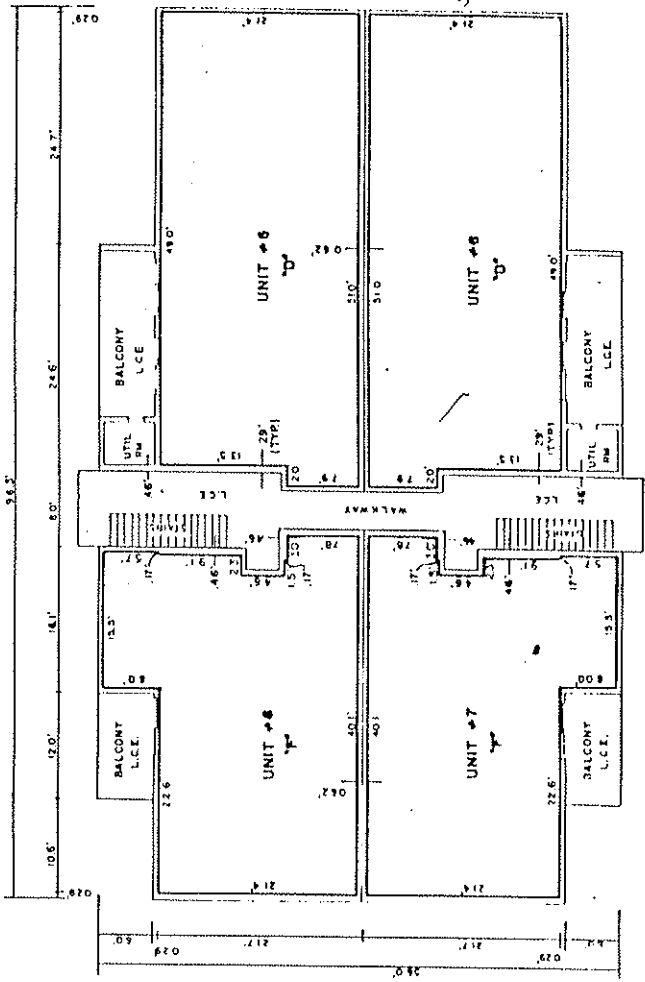
CONDOMINIUM PLAT BOOK PAGE

SHEET 6 OF 7

A CONDOMINIUM

LYING IN SECTION 36, T-43S, R-24E, LEE COUNTY, FLORIDA.

Howard F. Davis & Associates, Inc.  
Professional Engineers and Surveyors  
4233 MacArthur Blvd.  
FORT MYERS, FLORIDA 33907



SECOND FLOOR  
BUILDING #10006

# ARBOR LAKES CONDOMINIUM #3 A CONDOMINIUM

LYING IN SECTION 36, T-43-S, R-24-E, LEE COUNTY, FLORIDA.

Donald J. Davis & Associates, Inc.  
Civil Engineers  
6000 MacArthur Blvd., R.T. 11, M.L. 133  
Fort Myers, Florida 33907

SHEET 7 OF 7

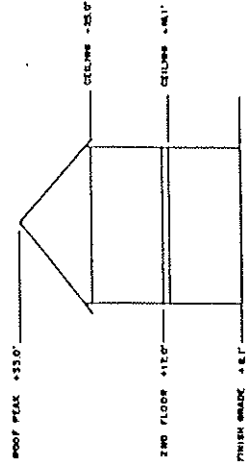


### LEGEND

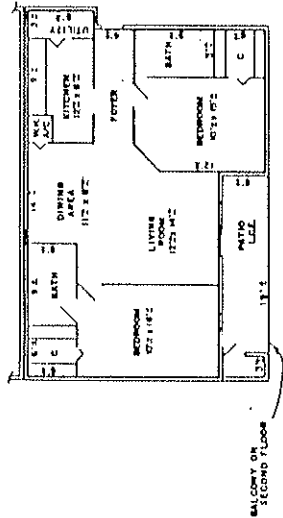
- L.C.E. = LIMITED COMMON ELEMENT
- W.H. = WATER HEATER
- A/C = AIR CONDITIONER
- C = CLOSET

### PROPOSED

### UNIT BOUNDARY ELEVATIONS

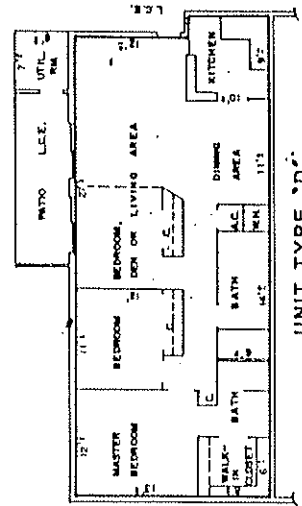


(TYPICAL ALL UNITS)



### UNIT TYPE 'F'

- AS SHOWN OR REVERSED



### UNIT TYPE 'D'

-AS SHOWN OR REVERSED