

INSTR # 1899903
OR BK 02098 PG 0197
Pgs 0197 - 233; (37pgs)
RECORDED 12/30/2005 10:06:19 AM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY L Wood

**DECLARATION OF CONDOMINIUM
OF
FAIRWAY PALMS CONDOMINIUM**

Fairway Palms, LLC., a Florida limited liability company (the "Developer"), hereby declares:

1. Introduction and Submission:

- 1.1 The Land. The Developer owns the fee simple title to certain land located in Martin County, Florida, as more particularly described in Exhibit "A" annexed hereto (the "Land").
- 1.2 Submission Statement. The Developer hereby submits the land, and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, less and except all public utility installations, and other personal property or equipment, if any, not owned by the Developer, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered.
- 1.3 Name. The name by which this condominium is to be identified is: Fairway Palms Condominium (herein 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 any Unit Owner.
- 2.4 "Association" means Fairway Palms II Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to the Association for the benefit of its members.
- 2.6 "Board" or "Board of Directors" means the board of directors or other representative body which is responsible for administration of the association.
- 2.7 "Building" or "Buildings" mean the structure or structures in which the Units are located on the Condominium Property.
- 2.8 "Bylaws" means the Bylaws of the Association.

- 2.9 "Committee" means a group of Board members, Unit Owners, or Board members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the Association budget or take action on behalf of the Board.
- 2.10 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units;
 - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements;
 - (c) An easement of support in every portion of the Unit which contributes to the support of a 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 this Declaration;
 - (f) Common Elements includes Limited Common Elements unless the context otherwise requires.
- 2.11 "Common Expenses" means the expenses of administration, maintenance, operation, repair, replacement, or protection of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expense, whether or not included in the foregoing designated as common expense by the Condominium Act, or this Declaration, the Articles or the Bylaws.
- 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, rents, profits and revenues on account of the Common Elements) over the Common Expenses.
- 2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to the Unit.
- 2.14 "Condominium Property" means the Land, Improvements, and property or property rights described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.15 "County" shall mean Martin County, Florida.
- 2.16 "Declaration" or "Declaration of Condominium" means this instrument or instruments by which the Condominium will be created, as they are from time to time amended.
- 2.17 "Developer" means Fairway Palms, LLC., a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Condominium. In the event of such partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Notwithstanding any assignment of Developer's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of Developer unless,

and only to the extent that, it expressly agrees to do so in writing. The rights of Developer under this Declaration are independent of Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association.

- 2.18 "Dispute", for purposes of Section 19.1, means any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or Bylaws to (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles of Bylaws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.
- 2.19 "Division" means the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- 2.20 "First Mortgagee" or "Mortgagee" means the owner or holder of a first mortgage encumbering a Condominium Parcel.
- 2.21 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) on the Condominium Property, including but not limited to, a Building or Buildings.
- 2.22 "Institutional First Mortgagee" or "Mortgagee" means the Developer or a generally recognized and duly authorized institutional lender such as a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, which owns or holds a first mortgage encumbering a Condominium Parcel. "Mortgagee" also includes the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration or any other lender, or its loan correspondent or agency of the United States Government holding, guaranteeing or insuring a first mortgage on a Condominium Parcel.
- 2.23 "Land" shall have the meaning given to it in Section 1.1 above.
- 2.24 "Limited Common Elements" mean those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as specified in this Declaration.
- 2.25 "Material Amendment" shall have the meaning given to it in Section 6.2 below.
- 2.26 "Primary Institutional First Mortgage" means the Institutional First Mortgage which owns at any time first mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgage.
- 2.27 "Special Assessment" means any assessment levied against Unit Owners other than the Assessment required by a budget adopted annually.
- 2.28 "Unit" means a part of the Condominium Property which is subject to exclusive ownership. Reference in this Declaration to "Units" shall mean all of the Units contained in the Condominium, unless the context is to the contrary or it is otherwise provided to the contrary.

- 2.29 "Unit Owner", or "Owner of a Unit" means a record owner of legal title to a Condominium Parcel as shown by the real estate records in the office of the Clerk of Martin County, Florida, whether such Owner be the Developer, one or more persons, firms, associations, corporations or other legal entities. "Owner" shall not mean or refer to the holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.
- 2.30 "Utility services" shall include, but not be limited to, electric power, water, air conditioning, MATV and CATV systems and garbage and sewage disposal.
- 2.31 "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 that is owned by more than one owner or by any entity.
- 2.32 "Voting Interests" means the voting rights distributed to the Association members pursuant to the Act and Section 5 of this Declaration. The voting interests of the Association are the voting rights distributed to the Unit Owners in all condominiums operated by the Association. On matters related to a specific condominium, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

3. Description of Condominium.

- 3.1 Identification of Units. The Land has constructed thereon ten Buildings containing a total of 80 Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each such Unit is set forth on Exhibit "B" annexed hereto. Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located and a plot plan thereof. Said Exhibit "B" together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with a Unit, as appurtenances thereto, (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association designated in this Declaration with the full voting rights appertaining thereto and (e) 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(s) of the interior undecorated finished lower surface of the ceiling.
- (ii) Lower boundaries. The horizontal plane of the interior undecorated finished upper surface of the floor.

- (b) Perimetrical boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the interior undecorated finished surface of the walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, conversation pits and skylights, such boundaries shall be extended to include the interior undecorated finished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, and all framing and casings therefor, shall be included in the boundaries of the Unit.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "B" hereto shall control in determining the boundaries of a Unit.

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

- (a) Balconies. Balconies abutting a Unit shall be for the exclusive use of the Unit Owner owning such abutting Unit. The Unit Owner shall be responsible for maintenance and care of the balcony, including, without limitation, all wiring, electric outlets, lighting fixtures and screening. A Unit Owner shall not enclose the exterior balconies, without the prior written approval of the Board of Directors. The Board of Directors shall be responsible for approving the design, structural integrity, aesthetic appeal and construction details, or otherwise, which approval may be unreasonably withheld. The Board of Directors shall determine whether or not the enclosure, will be installed.
- (b) Air Conditioner Condensing Unit. Each Unit Owner shall be responsible for the maintenance and care of the air conditioner condensing unit.
- (c) Parking Spaces. Parking is restricted to the parking spaces located on the parking areas, or spaces noted on the survey attached as Exhibit B hereto. Each space identified therein, is assigned a numerical designation. The Developer, for so long as it owns any Unit for sale, reserves the exclusive right to assign to any Unit the exclusive use of one uncovered parking space. The Developer shall be entitled to keep any fee it charges a Unit Owner for the exclusive use of an uncovered parking space(s) assigned to his Unit pursuant to this subsection. At such time that the Developer no longer has the right to assign any uncovered parking spaces, any remaining uncovered parking spaces, may be assigned by the Association. One uncovered parking space shall be assigned to each Unit as of the date of closing of title to each Unit for the exclusive use of the Unit Owner. All assignments of uncovered parking spaces shall be by separate written assignment which will indicate that it is made under this subsection, but it may not be recorded among the Public Records. So long as each Unit shall have one uncovered parking space appurtenant thereto at all times, a Unit Owner who has acquired additional uncovered parking spaces from the Developer or Association, shall have the right to sell, transfer or assign the exclusive use to such additional uncovered parking spaces to another Unit Owner.
- (d) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e. any hallway serving a single Unit or more than one Unit owned by

the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Elements hereunder, the Owner of the Units(s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Elements were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of same as a Limited Common Element hereunder shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, life safety systems, mechanical equipment and/or other Common Elements which are most conveniently service (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

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, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided the Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for maintenance, repair or replacement of any Common Elements or any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.
- (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 resident, their guests and invitees, and for each member of the Association shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements and/or Association Property as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. Subject to the provisions of Florida Statutes, Section 718.111(10), to the extent applicable, Developer hereby grants to delivery, pick-up and fire protection services, police and other authorities of the law, United States carriers, representatives of electrical, telephone and other utilities authorized by Developer to service the Condominium and representatives of cable television, and, for so long as Developer shall be in control of the Association, to such other persons as Developer may from time-to-time designate, the non-exclusive, perpetual right of ingress and egress over, through and across such portions of the Common Elements and/or Association Property for the purposes of performing their authorized services and investigation. Such easements shall survive any termination of this Declaration. 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.
- (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 maintenance, repair, or replacement of any Improvements, Common Elements or any portion of a Unit. The Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close hurricane shutters in the event of the issuance of a storm watch or storm warning.
- (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 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 and Association Property signs and other promotional material to advertise Units and certain Limited Common Element parking spaces or to manage the Condominium Property. Developer reserves the right to use any units not closed as temporary accommodations for, but not limited to, prospective purchasers. Such temporary accommodations shall not be considered a leasing of the Unit and shall not be subject to Section 18 hereof. No charge shall be made to Developer for such use.
- (g) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer with respect to the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion

and from time to time and without requiring prior approval of the Association and/or any Unit Owner (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 24.10.

- (h) Additional Easements. The Association, on its 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 Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property and Association Property, as 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 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 and Association Property.
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 from and shall pass with the title to the Unit, whether or not separately described. All of these aforescribed appurtenances 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.
5. Ownership of Common Elements and Common Surplus and Share of Common Expenses.
- 5.1 Percentage Ownership and Shares of Condominium. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses appurtenant to each Unit shall be on an equal fractional basis; the numerator of which is the number "one" and the denominator of which is the total number of Units in the Condominium, or 80.
- 5.2 Voting. Each Unit in the Condominium shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles. Each Unit Owner in the Condominium shall be a member of the Association. Each Unit Owner in the Condominium will have the right to personally cast his or her own vote in all matters voted upon.

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 of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of 75 percent of the voting interests of all Unit Owners.
- 6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, permit timeshare estates, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by not less than a majority of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.
- 6.3 Mortgagee's Consent. No Amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits privileges or priorities granted or reserved to mortgages of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgage shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.4 By The Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the Bylaws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (i) to permit time-share estates (which must be approved, if at all, in the manner provided in Section 6.2 above); or (ii) to effect a "Material Amendment", which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.
- 6.5 Execution and Recording. An Amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of

this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision...for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

- 7.1 Units. 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 in accordance with the original plans and specifications therefor or as otherwise directed by the Association and/or the Architectural Control and Maintenance Standards Committee, if applicable. Additionally, each Unit Owner shall pay all charges for utility services metered directly to his Unit.
- 7.2 Common Elements and Association Property. 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) and Association Property 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 the responsibility of the Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units or are Limited Common Elements:
- (a) where a Limited Common Element consists of a balcony, the Unit Owner who has the right to the exclusive use of said balcony, shall be responsible for the maintenance, care and preservation of the paint and surface of the walls and/or fences, including floor and ceiling, within said area, if any, and the fixed and/or sliding glass door(s) in the entrance way(s) or other portions 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) Air conditioner condensing unit, if applicable.
- 7.4 Association's Right of Access to Units. The Association has the irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit or Units.

- 7.5 Hurricane Shutter Specifications. The Board shall adopt hurricane shutter specifications for the Buildings, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. Notwithstanding any provision to the contrary in this Declaration, if approval is required hereunder, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. The Board may, subject to (a) the provisions of the Act that deal with contracts for the purchase, lease or rental of materials or equipment to be used by, or for contracts for services to be provided to the Association, and (b) the approval of a majority of voting interests of the Condominium, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters, whether on or within the Common Elements, Limited Common Elements, Units, or Association Property. However, where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the Board may not install hurricane shutters. The Board may operate shutters installed pursuant to this Section 7.5 without permission of the Unit Owners only where such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the Common Elements or Association Property.
- 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.
8. Additions, Alterations or Improvements by Association and Developer.
- 8.1 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 15 percent of the then existing estimated operating budget for the Condominium in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests of the Association represented at a meeting of the Association at which a quorum is attained of the Unit Owners of the Condominium. Any such additions, alterations, or improvements to such Common Elements or any part thereof costing in the aggregate of 15 percent or less of the then existing estimated operating budget for the Condominium 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.
- 8.2 Additions, Alterations or Improvements by Developer. The Developer, provided Developer is the owner of all of the Units in a Building (or Buildings, as the case may be) in the Condominium, shall have the right, without the vote or consent of the Association or Unit Owners, to change all or any part of the front, rear or side elevations of the Building (or Buildings, as the case may be); and, provided further that in connection with any changes, Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction.

9. Additions, Alterations or Improvements by Unit Owners and Developer.

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 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.

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 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). Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.2 shall be adopted in accordance with Section 6 and Section 10 of this Declaration.

10. Changes in Developer-owned Units. 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 (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements) and (ii) change the layout or number of rooms in any Developer owned Units. The Developer shall have the further right, without the consent or approval of the Board of Directors or other Unit Owners, to make such alterations in, to or upon any Developer owned Units in order to comply with design and construction guidelines adopted under applicable federal, state and local laws, ordinances, rules and regulations with respect to accessibility for handicapped persons. In making the above alterations, additions and improvements to the Units, the Developer may relocate or alter Common Elements adjacent to such Units, provided that such relocation or alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer so long as the Developer holds Units for sale in the ordinary course of business.

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 and Bylaws of the Association (respectively, Exhibits "C" and "D" 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 of access to each Unit during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (b) The power to make and collect Assessments and Special Assessments and other charges and surcharges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (c) The power to charge and collect a use fee from a Unit Owner for the exclusive or nonexclusive use of all or a portion of the Common Elements or Association Property; provided such use fee relates to expenses incurred by such Unit Owner.
- (d) 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.
- (e) 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 and Special Assessments, preparation of records, enforcement of rules and maintenance, repairs and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including but not limited to the making of Assessments, Special Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security mortgages and security interests in property the Association, provided that such actions are by a majority of the entire membership of the Directors and a majority of the voting interests of Owners represented at a meeting at which a quorum attained, or by such greater percentage of the Board or voting interests of the Unit Owners as may be specified in the Bylaws with respect to certain borrowing.
- (g) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the voting interests of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the use or benefit of the Unit Owners (whether or not on an exclusive basis). The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.

- (h) The power to adopt and amend the rules and regulations covering the details of the operation and use of the Condominium Property.
- (i) The power to levy reasonable fines against a Unit for failure of the Owner or its occupant, licensee or invitee to comply with any provision of this Declaration, the Bylaws or the rules and regulations.
- (j) 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, Bylaws and applicable rules and regulations; the Articles shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time.

- 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 any 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 or Bylaws 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 Bylaws. 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 Expenses shall include the expenses of the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, or other commonly used facilities and services, and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or Bylaws of the Association. 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 Bylaws. The expense of installation, replacement, operation, repair and maintenance of hurricane shutters by the Board pursuant to Section 7.5 of this Declaration and the Act shall constitute a Common Expense and shall be collected as provided in this Section 12. A Unit Owner who has previously installed hurricane shutters in accordance with Section 7.5 of this Declaration or laminated glass architecturally designed to function as hurricane protection which complies with the applicable building code shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit. However, such Unit Owner shall remain responsible for the pro rata share of expenses for hurricane shutters installed on Common Elements and Association Property by the Board pursuant to Section 7.5 of this Declaration and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair and maintenance of such shutters. Additionally, the cost of a master antenna television system or duly franchised cable television service, if any, obtained pursuant to a bulk contract, 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 costs in the 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 costs for cable television services and 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 by purchase at a foreclosure sale or by deed in lieu of foreclosure, 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, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments and Special Assessments that came due against the previous owner for his share of the Common Expenses up to the time of transfer of title. This liability is without prejudice to any right the Unit Owner may have to recover from the previous owner the amounts paid by the Unit Owner. 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 or Special Assessments for Common Expenses. Assessments, Special Assessments and installments thereof not paid within ten days from the date when they are due shall bear interest at the highest rate allowable by law from the due date until paid. The Association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of \$25.00 or five percent of each installment of the Assessment (and Special Assessment to the extent allowed by law), for each delinquent installment that the payment is late. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment, (and/or Special Assessment, to the extent allowed by law). The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee shall neither be subject to the provisions of Florida's interest and usury laws nor the provisions of the Condominium Act dealing with the levy of fines against a Unit. The Association has a lien on each Condominium Parcel for any unpaid Assessments (and Special Assessments to the extent allowed by law) on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessments (and Special Assessments to the extent allowed by law) 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 name and address of the association, 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 to the extent allowed by law, interest, costs, and attorney's 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 to the extent allowed by Law) 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 to the extent allowed by law) without waiving any claim of lien.

- 13.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least 30 days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments (and Special Assessments to the extent allowed by law). If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid Assessments (and Special Assessments to the extent allowed by law), 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 or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given and the court shall 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 the Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act and shall not apply if an action to foreclose a mortgage on the Unit is pending before any court if the Association's 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 First Mortgagee. A Mortgagee or its successor or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments that became due prior to the Mortgagee's acquisition of title. However, the Mortgagee's liability is limited to the lesser of (a) the Unit's unpaid Common Expenses and Assessments which accrued or came due during the six months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (b) one percent of the original mortgage debt. The provisions of this Section 13.5 shall not apply unless the Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the Mortgagee. The person acquiring title shall pay the amount owed to the Association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Parcel and proceed in the same manner as provided in this Section 13 for the collection of unpaid Assessments. If any unpaid share of Common Expenses or

Assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all the Unit Owners.

- 13.6 Developer's Liability for Assessments. Except as provided in this Section 13.6 and Section 12, no Unit Owner other than the Developer as expressed below may be excused from the payment of his proportionate share of Common Expenses unless all Unit Owners are likewise proportionately excused from such payment. The Developer hereby guarantees to each Unit Owner during the first interval of the Guaranty Period that the Assessment for Common Expenses will not increase over the amounts set forth in Exhibit E attached hereto per Unit per month. The first interval shall commence on the recording of this Declaration and end on the first day of the thirteenth calendar month following the month in which the closing of title to the first Unit occurs, or the date upon which the Developer shall cease to control the Association, in accordance with the provisions of the Bylaws, whichever is sooner (the "First Interval of the Guaranty Period"). Additionally, the Developer hereby guarantees to each Unit Owner that the Assessment for Common Expenses will not increase over the amounts set forth in Exhibit E attached hereto per Unit per month during the period commencing on the second day of the thirteenth calendar month following the month in which the closing of title to the first Unit occurs, for a period of one year, or the date upon which the Developer shall cease to control the Association, whichever is sooner (the "Second Interval of the Guaranty Period". The First Interval of the Guaranty Period and the Second Interval of the Guaranty Period are hereafter referred to as "Guaranty Period". Accordingly, in accordance with the provisions of Section 718.116 of the Condominium Act, the Developer shall be excused from the payment of its share of the Common Expenses which would have been assessed against Units owned by the Developer during the Guaranty Period. The Developer shall pay any amount of Common Expenses incurred during the Guaranty Period and not produced by the Assessments at the guaranteed level receivable from other Unit Owners (i.e., during the Guaranty Period, the Developer shall contribute an amount of money to the Association sufficient to eliminate any deficit between Assessments collectible from Unit Owners other than the Developer and the actual Common Expenses of the Condominium).

The Developer's financial obligation to the Association during the Guaranty Period is as follows: (a) the Developer shall pay the Common Expenses of the Condominium affected by the Developer's guarantee, including the funding of reserves as provided in the adopted annual budget of the Condominium, unless the reserves were waived, which exceed the regular periodic Assessments at the guaranteed level against all other Unit Owners in the Condominium and (b) the Developer shall pay the Common Expenses of the Association, including the funding of reserves as provided in the adopted annual budget of the Association, unless the reserves were waived, which are allocated to Units within the Condominium affected by the Developer's guarantee and which exceed the regular periodic Assessments against all other Unit Owners in the Condominium. Notwithstanding the foregoing, and as provided in Section 718.116(9)(a)(2) of the Act, in the event of an Extraordinary Financial Event (as hereinafter defined), the costs necessary to effect restoration shall be assessed against all Unit Owners owning units on the date of such natural disaster or Act of God, and their successors and assigns, including the Developer (with respect to Units owned by the Developer). As used in this subsection, an "Extraordinary Financial Event" shall mean a casualty loss affecting the Condominium and/or the Association Property resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association as required by Section 718.111(11)(a) of the Act.

- 13.7 Certificate of Unpaid Assessments. Within 15 days after receiving a written request from a Unit Owner, purchaser, or Institutional First Mortgagee, the Association shall provide a certificate signed by an officer or agent of the

Association stating all Assessments, Special Assessments and other moneys owed to the Association by the Unit Owner with respect to the Condominium Parcel.

- 13.8 Installments. Assessments or Special Assessments may be collected monthly or quarterly in advance, at the option of the Association, from time to time.
- 13.9 Special Assessments. The specific purpose or purposes of any Special Assessment approved in accordance with this Declaration, Articles, or Bylaws 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 reasonable approval of the Primary Institutional First Mortgagee, upon reasonable notice to the Association, which approval shall not be unreasonably withheld. If the Primary Institutional First Mortgagee were to disapprove or fail to approve the insurance coverage, the insurance coverage then in effect would remain in effect until such time that the Association and the Primary Institutional First Mortgagee agreed upon the substituted coverage. It shall be presumed that the insurance coverage obtained and maintained by the Association was adequate, satisfied the requirements of the relevant provisions of the Act, and was obtained in good faith with due diligence.
- (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 10 days prior to the beginning of the term of the policy or not less than 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 Buildings (including all fixtures, installations or additions comprising that part of the Building or Buildings within the boundaries of the Units initially installed, or replacements thereof, of like kind or quality in accordance with the original plans and specifications therefor, or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available, but excluding floor coverings, wall coverings and ceiling coverings, all furniture, furnishings, electrical fixtures, appliances, air-conditioning or heating equipment, water heaters, water filters, built-in cabinets, and countertops and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit and all air conditioning compressors that service only an individual Unit, whether or not located within the Unit boundaries; 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 percent of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
- (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- (ii) Such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$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) Workers' Compensation. Workers' compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance. Flood insurance, if required by law or as may reasonably be required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity Insurance. Fidelity insurance, if required under the provisions of the Act, covering all directors, officers and employees of the Association and managing agents who handle Association funds, if any.

- (f) Other Insurance. 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 10 days prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by 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. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any of them.
- (d) Certificate. In making distribution 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. Insurance policies issued to individual Unit Owners shall provide that the coverage afforded by such policies is excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association. 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 them.

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 percent 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 percent or more of the applicable interests in the Common Elements elect 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 Insurance 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 percent 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 percent 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 then such resolution not to proceed with the repair or restoration shall be deemed a vote in favor of withdrawal of the Condominium Property from the provisions of the Act. In such event, the withdrawal from condominium ownership shall be authorized and the Condominium Property 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 such event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit, and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order 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 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, nor not more than 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 percent 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 and Charges. 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 Owners' respective shares in the Common Elements.

If the proceeds of the insurance (for the Optional Property, if any) 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 for the Optional Property are insufficient, charges shall be made against the affected Unit Owner or Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such charges shall be in proportion to the cost of repairing the damage suffered by each Owner, 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 Special Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:
- (a) Association. If the total Special 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, then the sums paid upon such Special 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 Special 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 supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Special 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 Special Assessments paid by Owners, nor 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 charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain 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 insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.

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

- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged 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 after reduction as aforesaid by the Remaining Percentage Balance.

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

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the 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) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by 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 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 two-thirds (2/3) majority of the Board may, upon an opinion of counsel that its decision is reasonable, deal with the condemnation in such reasonable manner as it determines to be appropriate under the circumstances.
- 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 that is approved by not less than a majority of the total voting interests of the Unit Owners in the Condominium, unless required by any governmental entity.
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. 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 or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be.

Occupants of an approved leased 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, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

- 17.2 Children. Children shall 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.

- 17.3 Pets. Except for small domestic birds or fish, each Unit Owner (regardless of the number of joint owners) may maintain two household pets in his Unit to be limited to a dog and a cat, provided that the household pets are not kept, bred or maintained for any commercial purpose. Dogs may not be kept in a Limited Common Element area when the Owner is not in the Unit. No animals of any kind shall be kept under any circumstances in a Unit, or allowed upon the Condominium Property, except by prior written consent of the Board of Directors of the Association. Such pets shall nevertheless be subject to the reasonable rules and regulations promulgated by the Association. If consent is given by the Board, the consent may be withdrawn at any time by the Board at a duly called meeting of the Board, if the Board determines in its sole discretion that the pet has become a nuisance to the Unit Owners, or that the rules and regulations regarding pets are not being fully obeyed. If consent is withdrawn by the Board, the Unit Owner shall immediately remove the pet from the Condominium. Consent shall automatically terminate upon the death or other disposition of the pet for which consent was granted.

Pets shall never be allowed to run freely upon any of the Condominium Property, and/or Association Property except that pets shall be allowed to run freely within a Unit or within the balcony area which is a Limited Common Element adjacent to the Unit. When outside of a Unit, pets shall be leashed and in the company of an individual willing and able to fully control the pets. All pets shall be walked only in that part of the Common Elements designated by the Board for that purpose, or taken off the premises for relief and exercise. Any Owner maintaining a pet on Condominium Property shall be fully responsible for, and shall bear the expense of, any damage to persons or property resulting therefrom. Any such damage shall be determined by the Board of Directors of the Association.

No guest, lessee or invitee shall bring any animal whatsoever upon the Condominium Property. No one other than an Unit Owner is permitted to keep any pets.

This Section shall not be construed to authorize nor permit any pet to be kept within any Unit nor upon the Condominium Property which pet is or becomes a legal nuisance.

- 17.4 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.
- 17.5 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.
- 17.6 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction 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.
- 17.7 Leases. Leasing of Units shall not be subject to the prior written approval of the Association, but each lease shall be in writing; provided, however, (i) the Association must receive notice of the leasing of a Unit not less than five days prior to the commencement of the lease term (together with a copy of the applicable lease); and (ii) no lease shall be valid if the lessor is delinquent in the payment of Assessments to the Association (or becomes delinquent during the lease term) or has an outstanding fine (or incurs a fine which is not paid within five days following the adoption of same).

Every lease of a Unit shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto) and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the Lease). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required 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) and to pay any claim for injury or damage to property caused by the negligence of the tenant and special Assessments may be levied against the Unit therefor. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. If so required by the Association, any tenant requiring to lease a Unit may be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Payment of interest, claims against the deposit, refunds and disputes regarding the disposition of the deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes.

When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners.

- 17.8 Exterior Improvements; Landscaping. 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. The foregoing provision shall not apply to the right of a Unit Owner to display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of: (a) any provisions in the rules and regulations [including, but not limited to, rules numbered (10) and (12)], the Declaration or (b) any requirements dealing with flags or decorations.

17.9 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers and bathrooms or as otherwise installed by the Developer or prior to the recordation of this Declaration. Installation of hard surfaced floor coverings (other than by the Developer) in any other areas are to receive a sub-floor sound proofing (for example corking) sound absorbent, less dense floor coverings, such as carpeting. Use of a hard and/or heavy surface floor covering in any other location must be first submitted to and approved by the Board of Directors and also meet applicable structural requirements and any sound insulation standards adopted by the Board. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and compatible with the overall structural design of the building. Hot tubs are prohibited on the third and fourth floors of the building. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. The Board will have the right to specify the exact material to be used on balconies. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.

17.10 Effect on Developer; Association. With the exception of Sections 17.2, 17.3 and 17.7 hereof, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer or to Units owned by the Developer unless the Rules of the Florida Department of Business and Professional Regulation or the Act require otherwise. 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.

18.1 Sale of Units. A Unit Owner who sells or leases his Unit or any interest therein shall give to the Association a written notice of such sale or lease, together with the name and address of the purchaser or lessee, and such other information as the Association may reasonably require, so that the Association will have accurate, current records of the names and addresses of all owners and lessees.

18.2 Association's Approval of Leases. Except as provided below, Units may be leased without the prior written approval of the Association of both the lease and lessee. The Association has the right to require that a substantially uniform form of lease be used. The provisions of the Condominium Act, this Declaration, the

Articles, the Bylaws and the rules and regulations of the Association shall be deemed expressly incorporated into any leases of a Unit. Subleases of Units are prohibited. Notwithstanding the lease of his Unit, the liability of the Unit Owner under this Declaration shall continue.

- 18.3 Mortgagee's Rights. The Association shall not have the right to approve a lease for any Unit as provided in Section 18.2 of this Section 18 with respect to any lease of a Unit in connection with the foreclosure of a mortgage by a Mortgagee (or the acceptance of a deed in lieu of foreclosure). Similarly, the restrictions set forth in Section 17.7 of this Declaration with respect to Leases shall not apply to Mortgagees.
- 18.4 Exceptions. The provisions of this Section 18 shall not apply with respect to any lease 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, or (b) the Association; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.
- 18.5 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.
19. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 19.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within 30 days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

- 19.2 Negligence. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.
- 19.3 Compliance. In the event a Unit Owner, or occupant or licensee or invitee fails to maintain a Unit or fails to comply with any provision of this Declaration, the Bylaws, or reasonable rules of the Association, the Association shall have the right to levy reasonable fines against the Unit. The Association shall have the right to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 19.3 shall authorize the Association to enter a Unit to enforce compliance. The Unit Owner shall not have the right to levy or impose any fines. Unit Owners shall have similar rights of action against the Association. In addition, the Association shall have the irrevocable right of access to each Unit during reasonable hours when necessary for the maintenance, repair, or replacement of any Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit or Units.
- 19.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees) as may be awarded by the court. A Unit Owner prevailing in an action with the Association, in addition to recovering his reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.
- 19.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provisions 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. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80 percent of the applicable interests in the Common Elements (after 20 percent 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 80 percent 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, so long as the Primary Institutional First Mortgagee holds first mortgages on Units which have at least 67 percent of the voting interests in the Association or by Mortgagees which have at least 67 percent of the voting interests in the Association. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interest in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his 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 the Developer so long as the Developer offers Units for sale in the ordinary course of business. This section may be amended without the consent of Institutional First Mortgagees unless required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and unless the requirement provides that such consent may not be unreasonably withheld.

21. Additional Rights of Institutional First Mortgagees.

- 21.1 Upon written request to the Association by a Mortgagee, or the insurer or guarantor of any first mortgage encumbering a Unit, such Mortgagee, insurer or guarantor, if its request specifies the name, address and factual basis of entitlement of the requesting party, in addition to the right to examine the Association's books and records and to receive notice of and attend Association meetings, and any other rights provided herein, shall be entitled to prompt written notice of:
- (a) any condemnation or casualty loss that affects either a material portion of the Condominium Property or any Unit encumbered by its Mortgage;
 - (b) any 60 day delinquency in the payment of Assessments, Special Assessments or charges owed by the Unit Owner of any Unit on which it holds the Mortgage;
 - (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (d) any proposed action which requires the consent of a specified percentage of Mortgagees.
- 21.2 Any Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year.
- 21.3 Any Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or Bylaws.
- 21.4 Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least two-thirds of the Mortgagees (based upon one vote for each first mortgage owned), and Owners (other than the Developer) have given their prior written approval, the Association shall not be entitled to:
- (a) By act or omission seek to abandon or terminate the Condominium;
 - (b) Change the pro rata interest or obligations of any individual Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the Common Elements;
 - (c) Partition or subdivide any Unit;
 - (d) By act or omission, seek to abandon, partition, subdivide or encumber the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Owners shall not be deemed a transfer within the meaning of this clause.);

- (e) Use hazard insurance proceeds for losses to any portion of the Condominium for other than the repair, replacement or reconstruction of such portion.
22. Covenant Running With The Land. All provisions of this Declaration, the Articles, Bylaws and applicable rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units, shall be subject to and shall comply with the provisions of this Declaration and such Articles, Bylaws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into 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, Bylaws and applicable rules and regulations of the Association all, as they may be amended from time to time, by such Unit Owner.
23. Additional Provisions.
- 23.1 Notices. All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by certified mail (return receipt requested) to the Association care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage-prepaid, sealed wrapper, except notice of a change of address, which shall be deemed to have been given when received, or five business days after proper mailing, whichever shall first occur.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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.

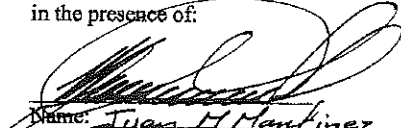
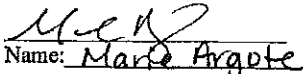
- 23.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 23.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the 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.
- 23.8 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 23.9 Refund of Taxes, Fees and Other Charges. Unless otherwise provided herein, Association agrees that any taxes, fees or other charges paid by the Developer to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to the Developer in the event said refund is received by the Association.
- 23.10 Disclaimer of Warranties. There are no warranties of any kind, express or implied, except for those imposed by law except only for those warranties provided in Section 718.618(6) Florida Statutes (and then only to the extent applicable and not yet expired). To the maximum extent lawful, Developer hereby disclaims any and all express or implied warranties as to design, construction, furnishing and equipping of the Condominium Property. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. All Unit Owners, by virtue of acceptance of title to their respective Units (whether from the Developer or another party) shall be deemed to have automatically waived all incidental and consequential damages.
- Unless specifically required by the Act or the applicable rules of the Florida Administrative Code, the Developer shall have no liability for any economic or non-economic damages to the Unit Owner. The only remedy available to the Unit Owner and/or Association shall be to compel the Developer to correct any construction defects that may be required by the Act or the applicable rules of the Florida Administrative Code.
- 23.11 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 Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.12 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 all documents or consents which may be required by all governmental agencies to allow the Developer to complete the plan of development of the Condominium as such plan may be hereafter amended; and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such

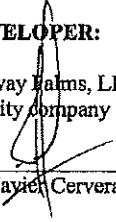
documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this section may not be amended without the consent of the Developer.

23.13 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.

23.14 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 22nd day of November, 2005.

Signed, sealed and delivered
in the presence of:

Name: Juan H. Martinez

Name: Marie Argote

DEVELOPER:
Fairway Palms, LLC., a Florida limited liability company
By: 
Javier Cervera, Jr., Manager

STATE OF FLORIDA)
)§.
COUNTY OF MIAMI-DADE)

The foregoing Declaration of Condominium was acknowledged before me this 22nd day of November, 2005, by Javier Cervera, Jr., as Manager of Fairway Palms, LLC., a Florida limited liability company, on behalf of the company who is personally known to me or has produced v/a, as identification and did take an oath.


Notary Public, State of Florida
Print Name: Deisy Saumell
Commission No. DD154882
My Commission Expires: 10/2/06

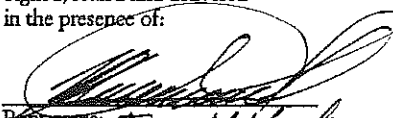
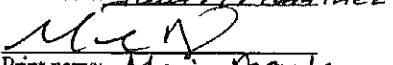


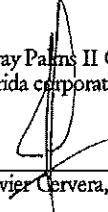
This Instrument prepared by
and after recording return to:
Robert M. Haber, Esq.
Freeman, Haber, Rojas & Stanham, LLP.
520 Brickell Key Drive, Suite O-305
Miami, Florida 33131
(305) 374-3800

CONSENT OF CONDOMINIUM ASSOCIATION

The Fairway Palms II Condominium Association, Inc., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Condominium and Exhibits attached thereto.


IN WITNESS WHEREOF, it has caused this Consent to be executed ^{AS of the} this 29th day of December, 2005.

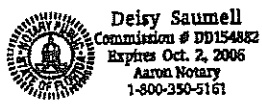
Signed, sealed and delivered
in the presence of:

Print name: Juan M. Hernandez

Print name: Marie Argate

Fairway Palms II Condominium Association, Inc.
a Florida corporation not for profit
By: 
Javier Cervera, Jr., President

STATE OF FLORIDA)
)S.
COUNTY OF MIAMI-DADE)

The foregoing Consent was acknowledged before me this 22nd day of November, 2005, by Javier Cervera, Jr., as President of FAIRWAY PALMS II CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of said corporation. He is personally known to me or has produced N/A as identification and did take an oath.


Notary Public, State of Florida
Print Name: Deisy Saumell
Commission No.: DD 154882
My Commission Expires: 10/2/10



INSTR # 1899904
OR BK 02098 PG 0234
Pgs 0234 - 3021 (69pgs)
RECORDED 12/30/2005 10:06:19 AM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY L Wood

CONSENT OF MORTGAGEE

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Eastern National Bank, (the "Mortgagee"), is the owner and holder of that certain Mortgage dated May 23, 2005, recorded May 25, 2005, in Official Records Book 02017, at Page 2249 of the Public Records of Martin County, Florida; and

WHEREAS, the Mortgage encumbers all or a portion of the property -- real, personal and mixed -- submitted to condominium ownership under that certain Declaration of Condominium of Fairway Palms Condominium to which this instrument is attached and which shall be recorded in the Public Records of said County.

NOW, THEREFORE, for TEN DOLLARS (\$10.00) and other good and valuable consideration received, the Mortgagee hereby consents to said Declaration of Condominium in accordance with, and to the extent required by, the provisions of Section 718.104(3), Florida Statutes, and hereby agrees that the lien and security interest of the Mortgage shall be spread to each and every unit in said Condominium and all appurtenances to each such unit.

The Mortgagee makes no warranty or representation of any kind or nature concerning said Declaration or any of its terms or provisions or the legal sufficiency thereof, and disavows any such warranty or representation as well as any participation in the development of said Condominium, and does not assume and shall not be responsible for any of the obligations or liabilities of the developer contained in the Declaration or any other documents issued in connection with the promotion of said Condominium. None of the representations contained in any such other documents shall be deemed to have been made by the Mortgagee, nor shall they be construed to create any obligation or liability on the part of the Mortgagee to any person relying thereon; provided however that all rights, benefits and privileges in favor of Fairway Palms, LLC, shall inure to the benefit of the Mortgagee or a receiver or third party purchaser in the event of a foreclosure or a deed given in lieu of foreclosure and any such person shall succeed to mortgagor's interest in the Condominium.

WITNESS the due execution hereof this 6 day of DECEMBER, 2005, to be effective as of the date of said Declaration of Condominium.

Signed, sealed and delivered
in the presence of:

[Signature]
Print name: Primo Gonzalez

[Signature]
Print name: DAISY CASTAÑEDA

Eastern National Bank

By: [Signature]
Printed name: EMILIO HERNANDEZ
Title: SENIOR VICE PRESIDENT

STATE OF FLORIDA)
)S
COUNTY OF MIAMI-DADE)

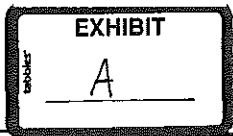
The foregoing instrument was acknowledged before me this 6 day of December, 2005, by Conchita Hernandez as VP of Eastern National Bank who acknowledged to me that he has executed the above and foregoing instrument on behalf of the bank, for the intent and purposes therein expressed. She is personally known to me or has produced _____ for identification, and she did not take an oath.



Nora Galego

Notary Public, State of Florida
Print name: NORA GALEGO
Commission No.: _____
My Commission Expires: _____

This Instrument prepared by and
after recording return to:
Robert M. Haber, Esquire
Freeman, Haber, Rojas & Stanham, LLP.
520 Brickell Key Drive, # O-305
Miami, Florida 33131
(305) 374-3800



PROPERTY ADDRESS:

6533 S.E. FEDERAL HWY.
STUART, FL 34997

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE RUN SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 36, A DISTANCE OF 2649.77 FEET, MORE OR LESS TO A POINT OF BEGINNING AT THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 36; THENCE RUN WESTERLY ALONG SAID SOUTH LINE, A DISTANCE OF 405.87 FEET, MORE OR LESS TO THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD No.5 (U.S. HIGHWAY No.1); THENCE RUN NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 643.72 FEET; THENCE RUN NORTHEASTERLY AT A RIGHT ANGLE TO SAID RIGHT-OF-WAY LINE, A DISTANCE OF 500.00 FEET; THENCE RUN SOUTHEASTERLY PARALLEL TO THE RIGHT-OF-WAY OF STATE ROAD No.5, A DISTANCE OF 812.03 FEET MORE OR LESS TO AN INTERSECTION WITH THE EAST LINE OF SAID SECTION 36; THENCE RUN SOUTH ALONG SAID EAST LINE, A DISTANCE OF 338.06 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

LESS THE FOLLOWING DESCRIBED PARCEL: COMMENCE AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE RUN SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 36, A DISTANCE OF 2649.77 FEET MORE OR LESS TO THE SOUTH LINE OF THE NORTH 1/2 OF SECTION 36; THENCE RUN WESTERLY ALONG SAID SOUTH LINE, A DISTANCE OF 405.87 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD No.5 (U.S. HIGHWAY No.1); THENCE RUN NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 338.72 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE TO RUN NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 305.00 FEET; THENCE NORTH 31°38'59" EAST, A DISTANCE OF 275.00 FEET; THENCE SOUTH 58°21'01" EAST, A DISTANCE OF 305.00 FEET; THENCE SOUTH 31°38'59" WEST, A DISTANCE OF 275.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.926 ACRES MORE OR LESS.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS, IN COMMON WITH OTHERS OVER THE FOLLOWING DESCRIBED PARCEL:

STARTING AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, RUN SOUTH 00°26'40" WEST ALONG THE EAST LINE OF SECTION 36, FOR A DISTANCE OF 2311.71 FEET TO A POINT; THENCE RUN NORTH 57°52'02" WEST, FOR A DISTANCE OF 812.03 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED ENTRANCEWAY EASEMENT:

THENCE CONTINUE NORTH 57°52'02" WEST, FOR A DISTANCE OF 235.00 FEET TO A POINT; THENCE RUN SOUTH 32°07'58" WEST, A DISTANCE OF 114.75 FEET TO A POINT; THENCE RUN SOUTH 57°52'02" EAST, FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE RUN SOUTH 32°07'58" WEST, FOR A DISTANCE OF 385.25 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY No.1; THENCE RUN SOUTH 57°52'02" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY No.1 FOR A DISTANCE OF 85.00 FEET TO A POINT; THENCE RUN NORTH 32°07'58" EAST, FOR A DISTANCE OF 500.00 FEET TO THE POINT OF BEGINNING.

**FAIRWAY PALMS CONDOMINIUM
GENERAL NOTES & CERTIFICATES**

EXHIBIT

B

DESCRIPTION OF CONDOMINIUM UNITS:

Each condominium unit consists of the space bound by a vertical projection of the condominium unit boundary lines shown herein and by the horizontal planes at the undecorated finished floor and the bottom of the unfinished ceiling.

The condominium unit dimensions shown shall be measured at interior undecorated finished surfaces of the floors, walls and ceilings.

DESCRIPTION OF UNIT BOUNDARIES:

Each unit shall include the 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(s) of the interior undecorated finished lower surface of the ceiling.
- (ii) Lower Boundaries. The horizontal plane of the interior undecorated finished upper surface of the floor.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the unit shall be the vertical planes of the interior undecorated finished surface of the walls bounding the unit extended to intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where are apertures in any boundary, including, but not limit to, windows, doors, conversation pits and skylight, such boundaries shall be extended to include the exterior undecorated finished surfaces of apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent material, and all framing and casings therefore, shall be included in the boundaries of the unit.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "B" hereto shall control in determining the boundaries of a Unit.

DESCRIPTION OF COMMON ELEMENTS:

All land and all portions of the improvements shown on these plans not within any condominium unit or limited common element are parts of the common elements.

Each condominium unit shall have as an appurtenance thereto an undivided share of the common elements as the same are described and set forth in the Declaration of Condominium.

DESCRIPTION OF LIMITED COMMON ELEMENTS:

The balconies, parking spaces, and air conditioning units are limited common elements and are appurtenant to the condominium units.

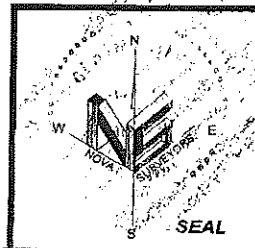
SURVEYOR'S CERTIFICATE:

I hereby certify that the attached survey notes and plans marked Sheets 01 through 34 of Exhibit "A" of the Declaration of Condominium of FAIRWAY PALMS CONDOMINIUM, are correct and construction of the planned improvements, including, but not limited to, landscaping, utility services and access to the units, and common element facilities serving the improvements are substantially complete as noted, so that such material, together with the wording of the Declaration of Condominium of FAIRWAY PALMS CONDOMINIUM relating to matters of survey, are an accurate representation of the location and dimensions of the improvements described; and further that with such material there can be determined therefrom the identification, location and dimensions of the common elements, the limited common elements and each condominium unit.

John Ibarra
Professional Surveyor and Mapper State of Florida Registration No. 5204

DATE: 06-29-2005

Not valid without the signature and original raised seal of a Florida licensed Surveyor and Mapper.



FAIRWAY PALMS CONDOMINIUM

BOUNDARY SURVEY NOTES

PROPERTY ADDRESS:

6533 S.E. FEDERAL HWY.
STUART, FL 34997

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE RUN SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 36, A DISTANCE OF 2649.77 FEET, MORE OR LESS TO A POINT OF BEGINNING AT THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 36; THENCE RUN WESTERLY ALONG SAID SOUTH LINE, A DISTANCE OF 405.87 FEET, MORE OR LESS TO THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD No.5 (U.S. HIGHWAY No.1); THENCE RUN NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 643.72 FEET; THENCE RUN NORTHEASTERLY AT A RIGHT ANGLE TO SAID RIGHT-OF-WAY LINE, A DISTANCE OF 500.00 FEET; THENCE RUN SOUTHEASTERLY PARALLEL TO THE RIGHT-OF-WAY OF STATE ROAD No.5, A DISTANCE OF 812.03 FEET MORE OR LESS TO AN INTERSECTION WITH THE EAST LINE OF SAID SECTION 36; THENCE RUN SOUTH ALONG SAID EAST LINE, A DISTANCE OF 338.06 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

LESS THE FOLLOWING DESCRIBED PARCEL: COMMENCE AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE RUN SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 36, A DISTANCE OF 2649.77 FEET MORE OR LESS TO THE SOUTH LINE OF THE NORTH 1/2 OF SECTION 36; THENCE RUN WESTERLY ALONG SAID SOUTH LINE, A DISTANCE OF 405.87 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD No.5 (U.S. HIGHWAY No.1); THENCE RUN NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 338.72 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE TO RUN NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 305.00 FEET; THENCE NORTH 31°38'59" EAST, A DISTANCE OF 275.00 FEET; THENCE SOUTH 58°21'01" EAST, A DISTANCE OF 305.00 FEET; THENCE SOUTH 31°38'59" WEST, A DISTANCE OF 275.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.926 ACRES MORE OR LESS.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS, IN COMMON WITH OTHERS OVER THE FOLLOWING DESCRIBED PARCEL:

STARTING AT THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, RUN SOUTH 00°26'40" WEST ALONG THE EAST LINE OF SECTION 36, FOR A DISTANCE OF 2311.71 FEET TO A POINT; THENCE RUN NORTH 57°52'02" WEST, FOR A DISTANCE OF 812.03 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED ENTRANCEWAY EASEMENT:

THENCE CONTINUE NORTH 57°52'02" WEST, FOR A DISTANCE OF 235.00 FEET TO A POINT; THENCE RUN SOUTH 32°07'58" WEST, A DISTANCE OF 114.75 FEET TO A POINT; THENCE RUN SOUTH 67°52'02" EAST, FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE RUN SOUTH 32°07'58" WEST, FOR A DISTANCE OF 385.25 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY No.1; THENCE RUN SOUTH 57°52'02" EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY No.1 FOR A DISTANCE OF 85.00 FEET TO A POINT; THENCE RUN NORTH 32°07'58" EAST, FOR A DISTANCE OF 500.00 FEET TO THE POINT OF BEGINNING.

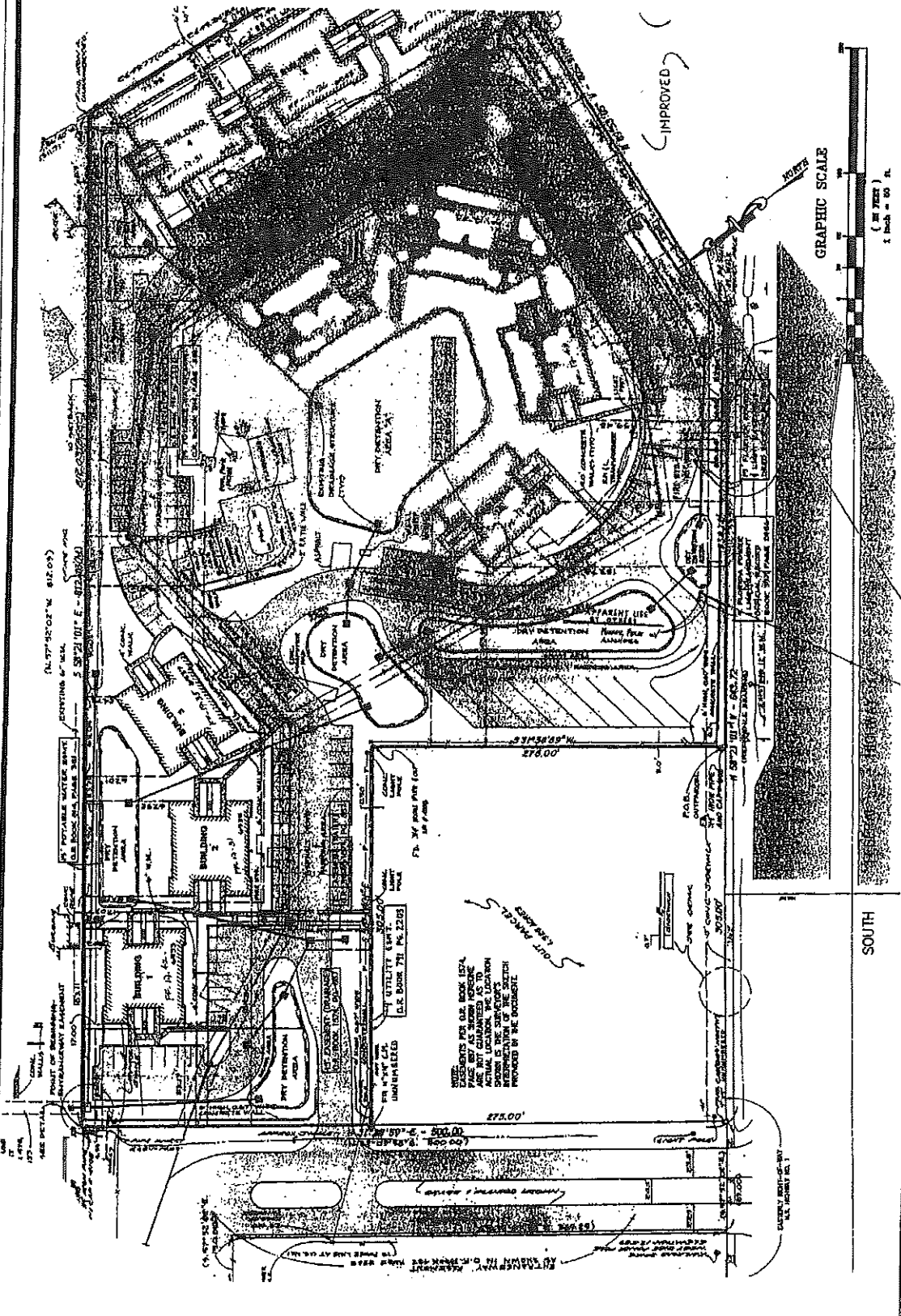
SURVEY NOTES:

SCALES OF LENGTHS MAY BE EXAGGERATED FOR CLARITY.
ELEVATIONS SHOWN HEREON IS REFERRED TO MARTIN COUNTY TO BENCHMARK: PLAZA 1.
ELEVATION: 18.93 FEET (NGVD 29)

FLOOD ZONE:

"X" ELEVATION= N/A
COMMUNITY No. 120161, PANEL No. 0302, SUFFIX "F"
DATE OF FEDERAL INSURANCE RATE MAP: 10/04/2002

**FAIRWAY PALMS CONDOMINIUM
BOUNDARY SURVEY SKETCH**



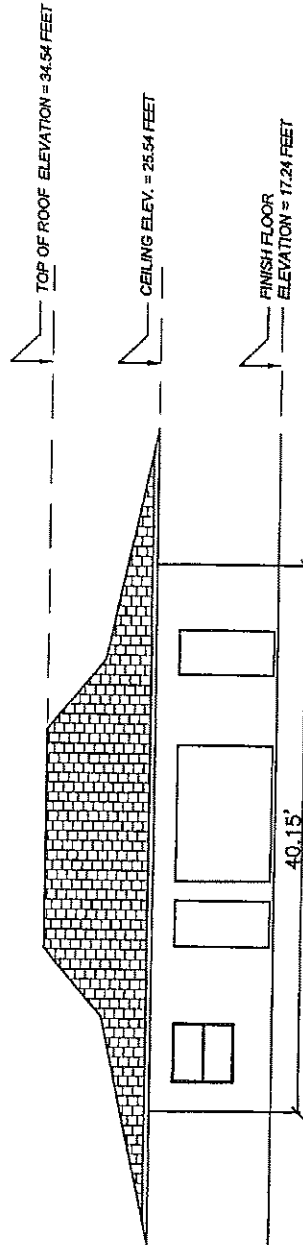
FAIRWAY PALMS CONDOMINIUM

SKETCH OF NORTH VIEW OF CLUB HOUSE

GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.



NORTH VIEW

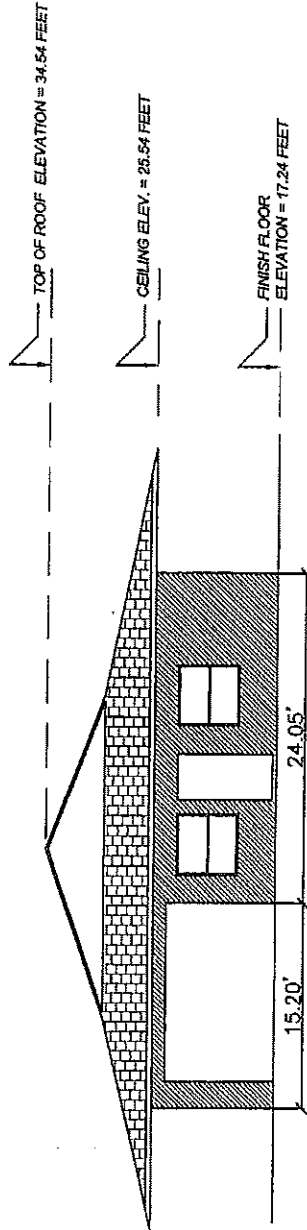
FAIRWAY PALMS CONDOMINIUM

SKETCH OF EAST VIEW OF CLUB HOUSE

GRAPHIC SCALE



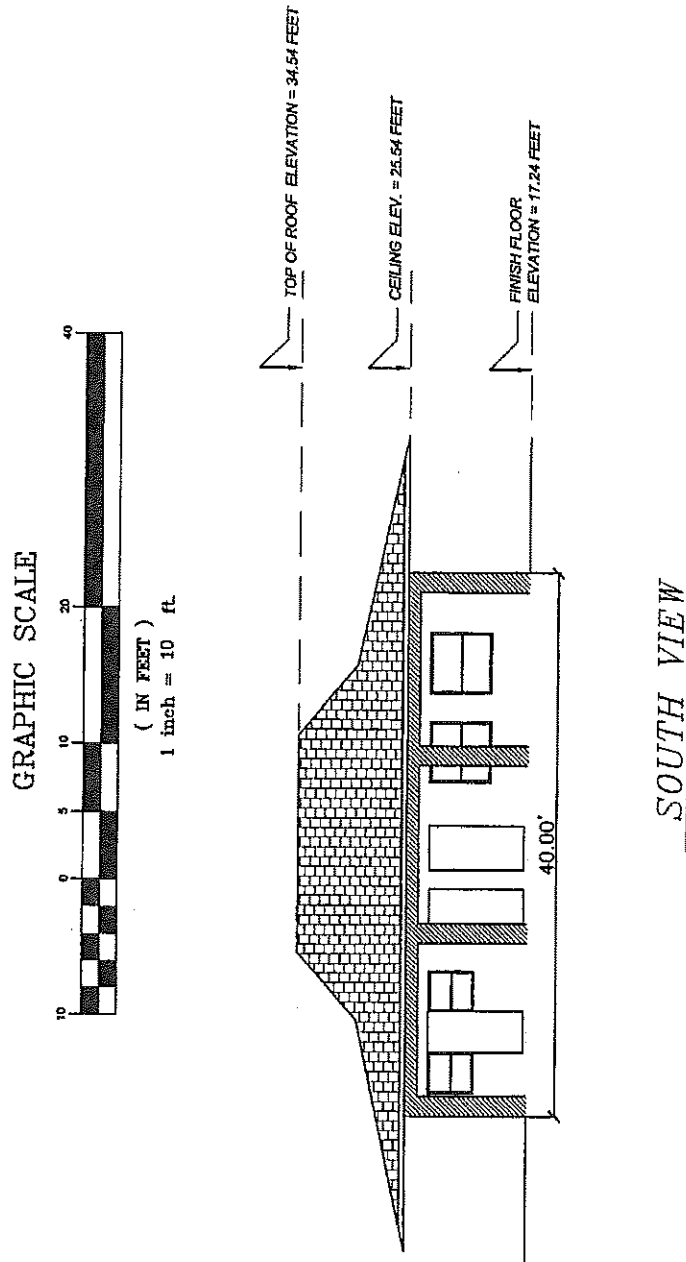
(IN FEET)
1 inch = 10 ft.



EAST VIEW

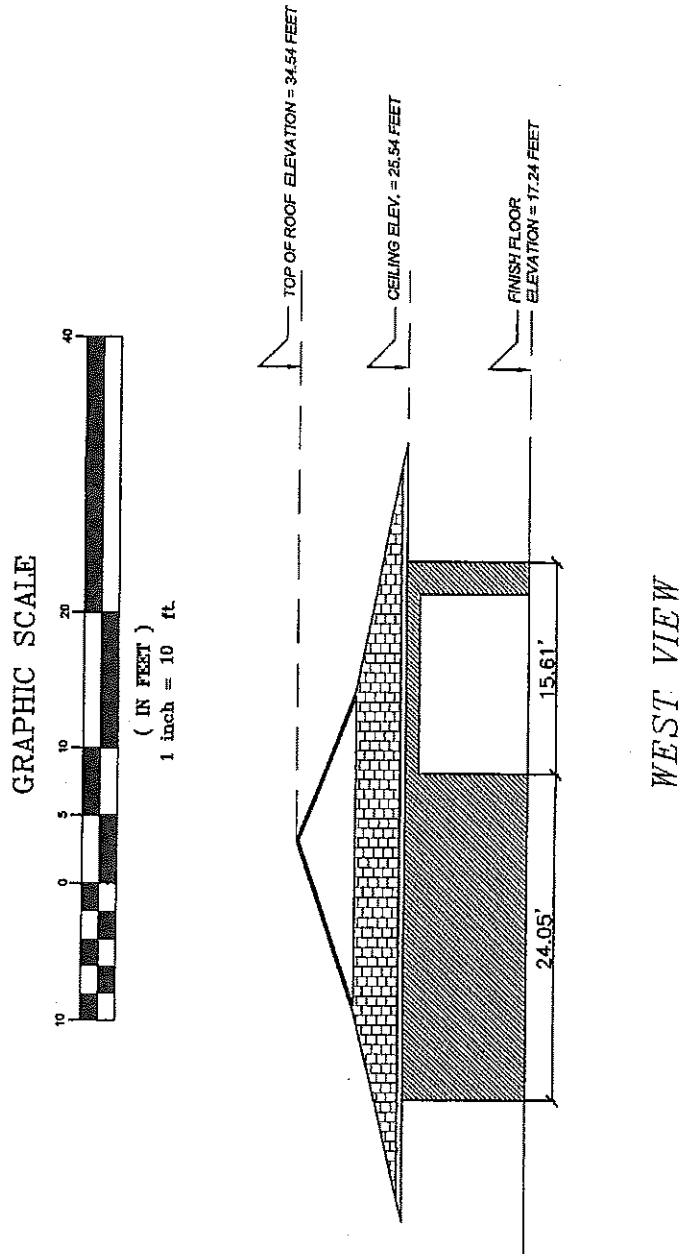
FAIRWAY PALMS CONDOMINIUM

SKETCH OF SOUTH VIEW OF CLUB HOUSE



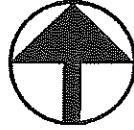
FAIRWAY PALMS CONDOMINIUM

SKETCH OF WEST VIEW OF CLUB HOUSE



FAIRWAY PALMS CONDOMINIUM

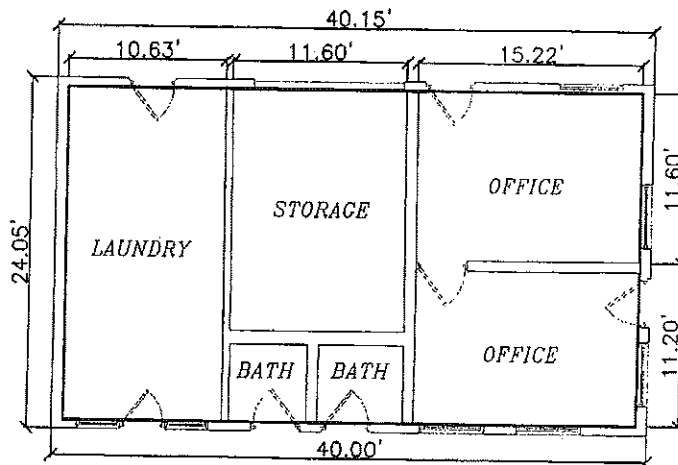
CLUB HOUSE FLOOR PLAN



GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.

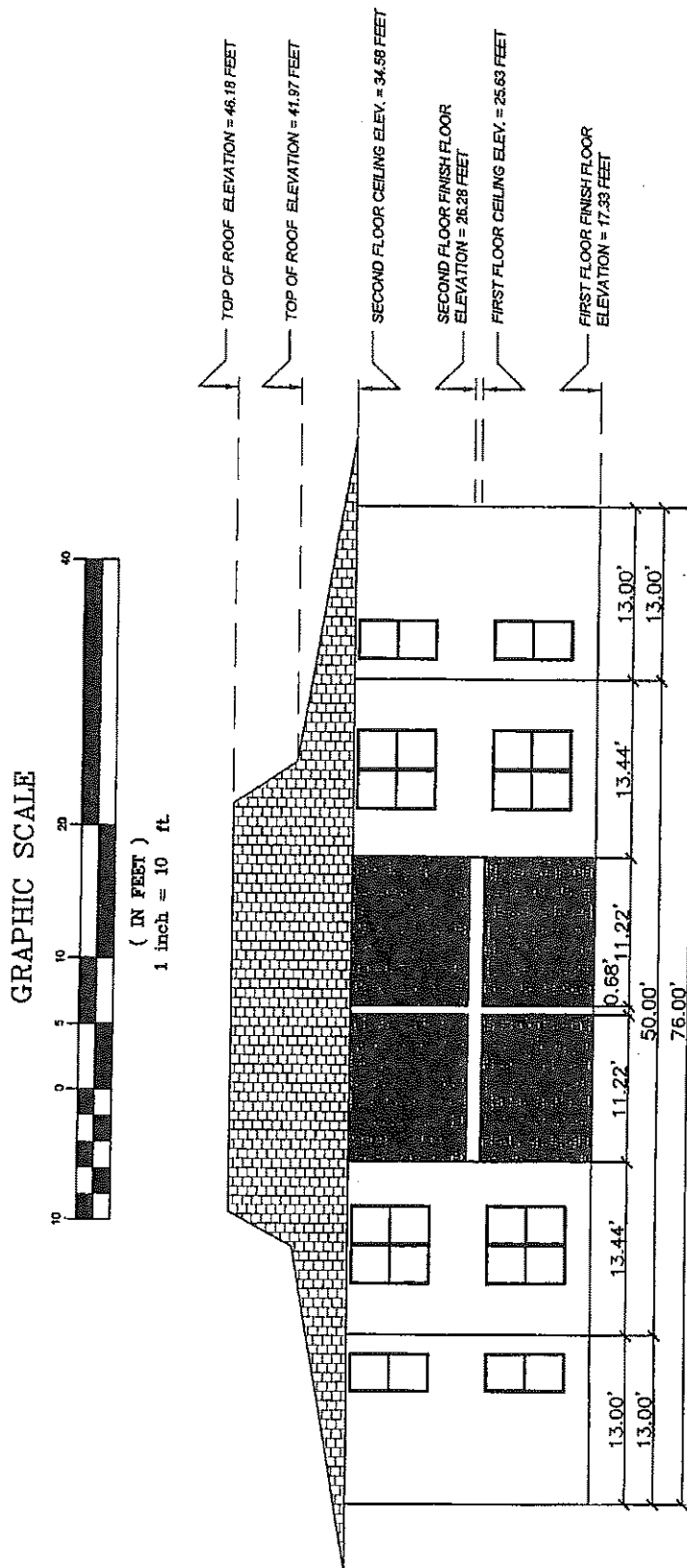


CLUB HOUSE

879 sq. ft.

FAIRWAY PALMS CONDOMINIUM

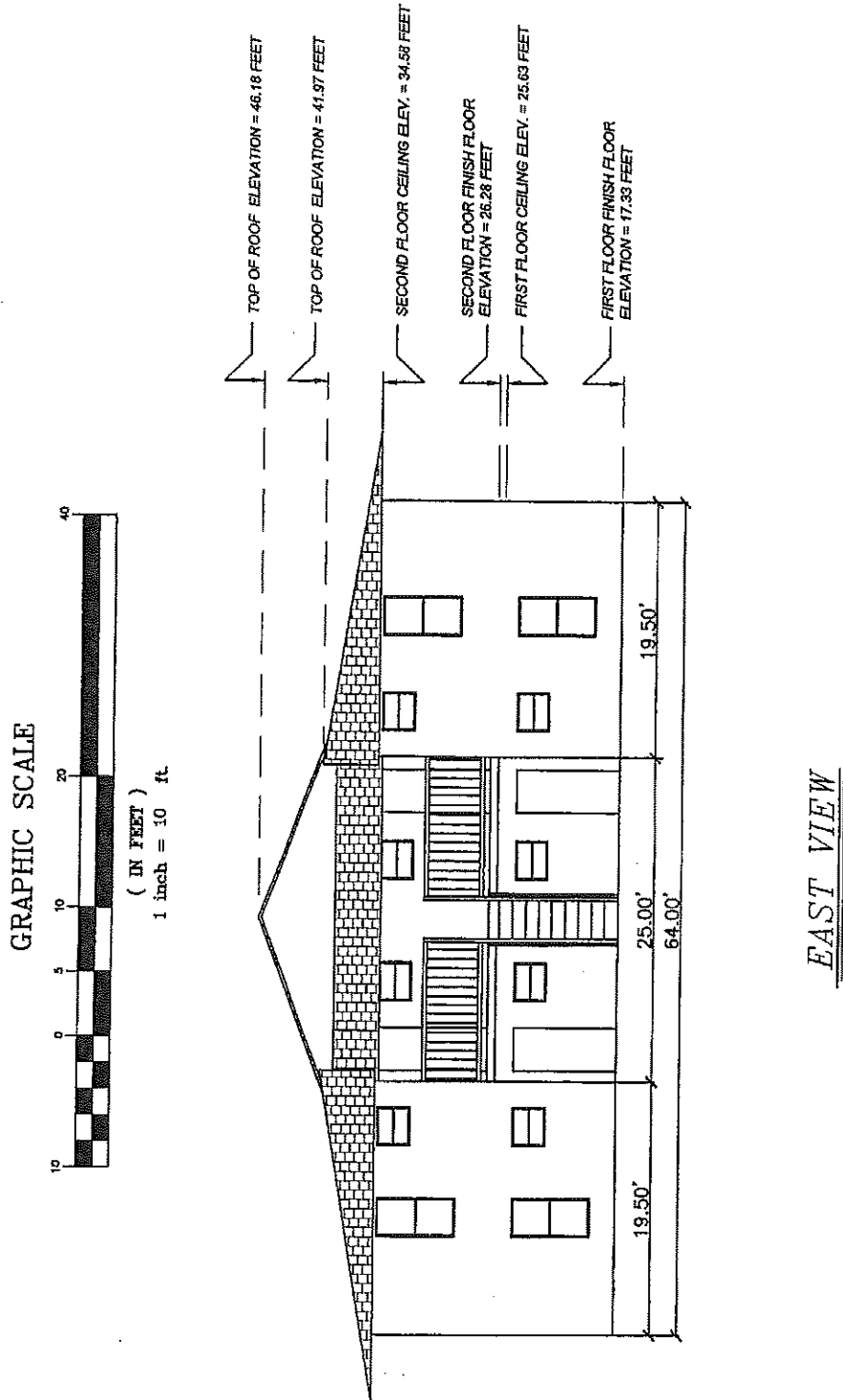
SKETCH OF NORTH VIEW OF BUILDINGS 2-3



NORTH VIEW

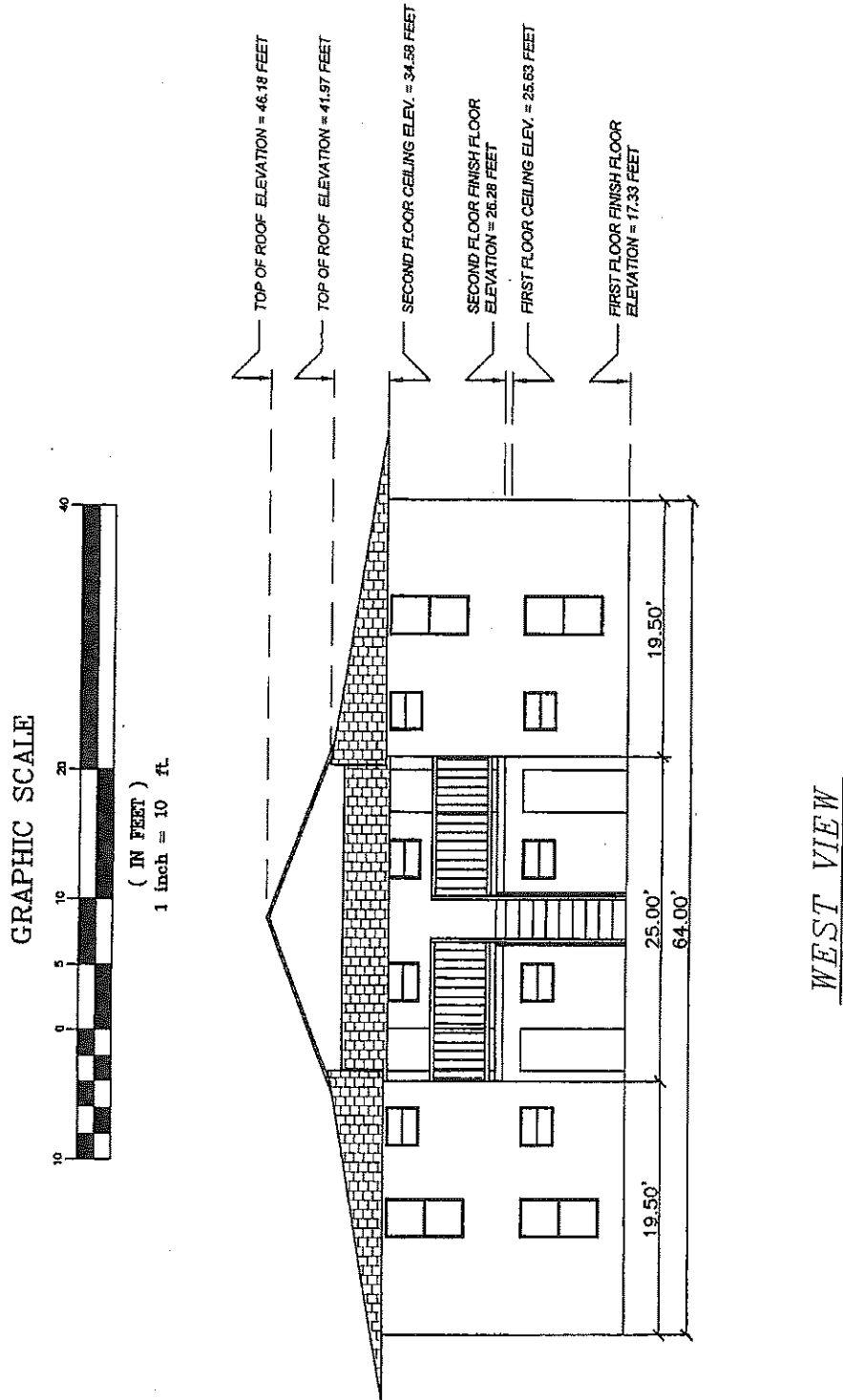
FAIRWAY PALMS CONDOMINIUM

SKETCH OF EAST VIEW OF BUILDINGS 2-3



FAIRWAY PALMS CONDOMINIUM

SKETCH OF WEST VIEW OF BUILDINGS 2-3



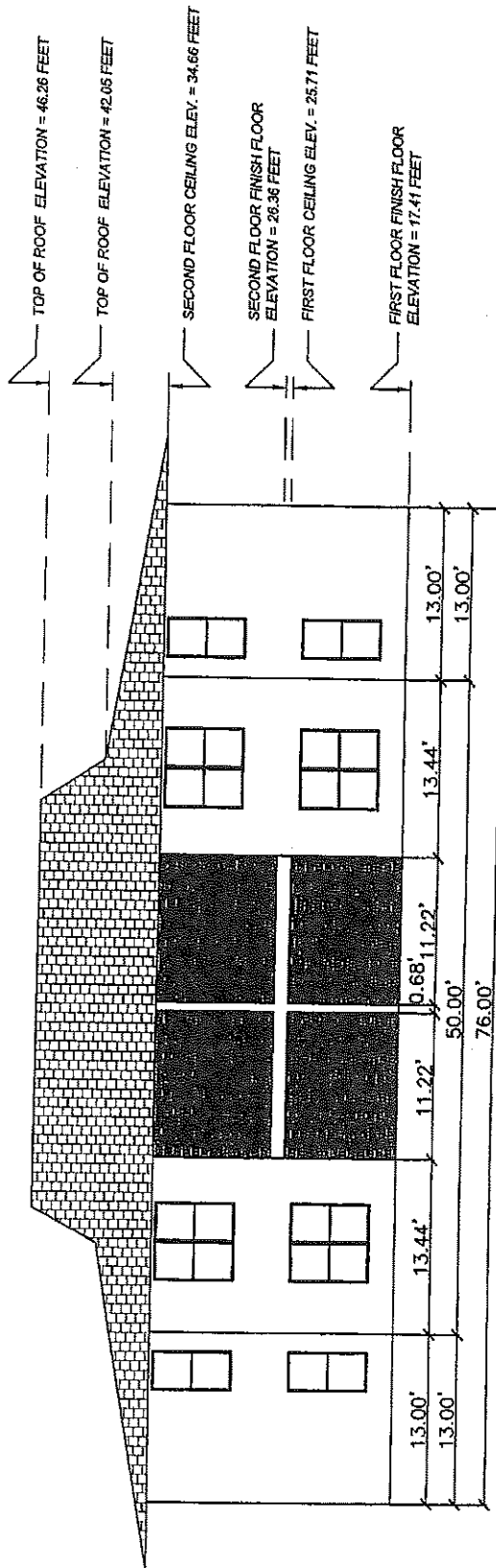
FAIRWAY PALMS CONDOMINIUM

SKETCH OF NORTH VIEW OF BUILDINGS 1-8-9

GRAPHIC SCALE



(IN FEET)
 1 inch = 10 ft.



NORTH VIEW

5882 N.W. 7th STREET SUITE
202 MIAMI, FLORIDA 33126
TELEPHONE: (305) 264-2660
FAX: (305) 264-0229

NOVA SURVEYORS INC.

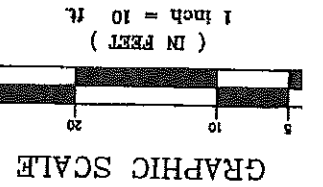
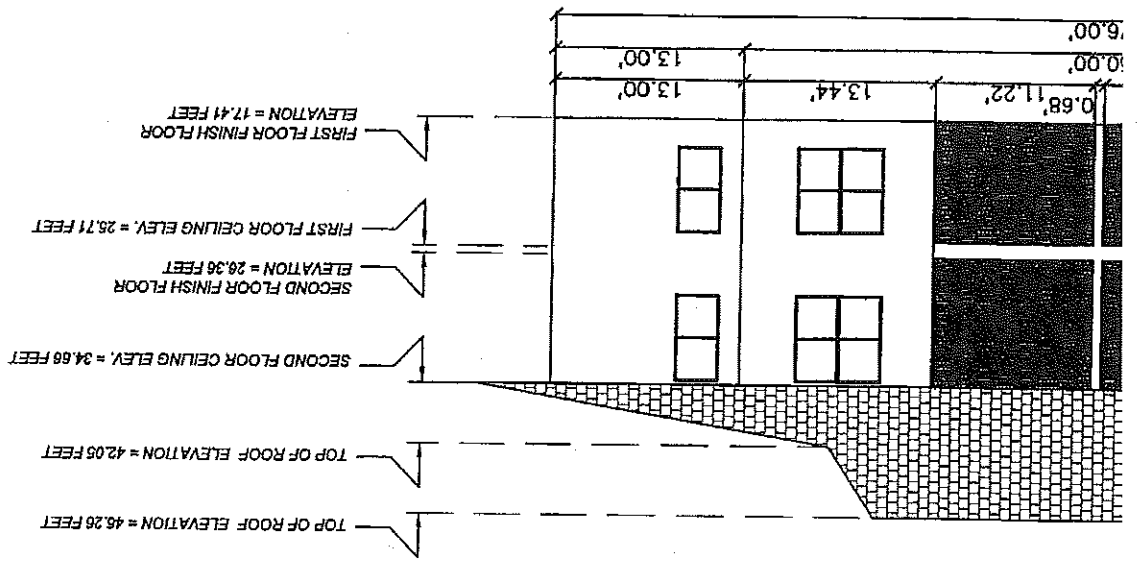
LAND SURVEYORS

SURVEY NO. 05-5134

SHEET NO. 13 OF 34

FAIRWAY PALMS CONDOMINIUM

SKETCH OF NORTH VIEW OF BUILDINGS 1-8-9



NORTH VIEW