

**FIRST AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**for**  
**THE RESIDENCES AT HARBOUR POINTE WEST CONDOMINIUM**



**This filing expressly restates and supersedes all prior versions of the Declaration of Condominium, including the following: Book 21195, Page 1027; First Supplement at Book 21209, Page 1624, and Second Supplement at Book 21642, Page 1303.**

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**HARBOUR POINTE WEST, LLC**, a Florida limited liability company, hereby declares:

1. Introduction and Submission.
  - 1.1 The Land. The Developer owns the fee title to certain land located in Pinellas County, Florida, as more particularly in *Exhibit A* attached hereto (the “Land”).
  - 1.2 Submission Statement. The Developer hereby submits the land and all improvements erected or to be erected thereon and all property, real, personal or mixed, now or hereafter on or within the Land in Pinellas County, Florida – but excluding all public or private (e.g. cable television) utility installations therein or thereon not owned by Developer – to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium or any rules or regulations promulgated pursuant thereto.
  - 1.3 Name. The name by which this condominium is to be identified as The Residences at Harbour Pointe West, a Condominium (hereinafter called the “Condominium”).
2. Definitions. The Following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meaning ascribed 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, long with all regulations promulgated thereunder.
- 2.2 “Articles “or “Articles of Incorporation” means the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 “Assessment” means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner, including assessments collected pursuant to the annual budget and all Special Assessments as defined in Section 132 below.
- 2.4 “Association” means in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership, which shall include, without limitation, THE RESIDENCES AT HARBOUR POINTE WEST COMDOMINIUM ASSOCIATION, INC., A Florida not-for-profit corporation.
- 2.5 “Association Property “means the property, real and personal, in which title or ownership is vested in, or which is dedicated on, a recorded plat or leased to the Association for the use and benefit of its members.
- 2.6 “Board of Directors” or “Board” means the Board of the Association.
- 2.7 “Building” means the structure in which the Units and the Common Elements are located which is located on the Condominium Property.
- 2.8 “Bylaws” means the Bylaws of the Association, as amended from time to time. The Bylaws in effect on the date hereof are attached hereto as *Exhibit D*.
- 2.9 “Commercial Unit” means the Unit on the ground floor that is designated for commercial use.
- 2.10 “Common Elements” means and include:
  - (a) The portions of the Condominium Property which are not included within the Units.
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Any other parts of the Condominium Property designated as Common Elements in the Declaration.

- 2.11 “Common Expenses” mean all expenses incurred by the Association for the Condominium and charges assessed or imposed against Units in the Condominium by the Association, as authorized by the Act. If approved by the Board of Directors, “Common Expenses” shall include the cost of a master television antenna system or duly franchised cable television service obtained pursuant to bulk contract. For all purposes of this Declaration, “Common Expenses” shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended, including a reserve account to insure that the Association perform regularly scheduled maintenance of the envelope of the Building and that such maintenance is performed in accordance with all manufacturers’ guidelines and further insure that the Association enters into an ongoing maintenance agreement with a certified roofing painting and water proofing consultant to maintain the roofs, decks, painting and caulking of the Building during the manufacturers’ warranty periods. Common Expenses shall include any and all obligations imposed by any Reciprocal Easement Agreement recorded as Instruments in the Public Records of Pinellas County, Florida.
- 2.12 “Common surplus” means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.
- 2.13 “Condominium” means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.
- 2.14 “Condominium Parcel” means a residential Unit together with the undivided share in the Common Elements which is appurtenant to said Unit, and when the context permits, the term includes all other appurtenances to the Unit.
- 2.15 “Condominium Property” means the portion of the land submitted to condominium ownership. Together with improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.16 “County” means the County of Pinellas, State of Florida.
- 2.17 “Declaration” or “declaration of condominium” means the instrument or instruments by which a condominium is created, as they are from time to time amended.
- 2.18 “Developer” means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:  
(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

Unless used to the contrary, or assigned to a successor, the term Developer shall initially refer to Harbour Pointe West, LLC, a Florida limited liability company.

- 2.19 “Division” means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.
- 2.20 “Institutional” mean all structures and artificial changes to the nature environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.
- 2.21 “Institutional First Mortgagee” means a bank, saving and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”) or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A “Majority of institutional First Mortgages” shall mean and refer to institutional First Mortgagees of Units to which at least fifty one percent (51%) of the voting interests of Units subject to mortgages held by institutional First Mortgagees are appurtenant.
- 2.22 “Land” shall mean the land and airspace described in *Exhibit A* attached hereto, which shall include the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term “land” may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.
- 2.23 “Limited Common Elements” mean those Common Elements the use of which is received to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration in Section 3.4 below. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

- 2.24 “Residential Unit” means any of the Units other than the Commercial Unit, all of which are designed for residential use.
- 2.25 “Unit” means a part of the condominium Property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.
- 2.26 “Unit Owner” or Owner of a Unit” or “Owner” means the record of legal title to a Condominium Parcel.

3. Description of Condominium and Development Plan.

- 3.1 Development. The Condominium shall consist of 13 Units in one Building, which shall include twelve (12) Residential Units and one (1) Commercial Unit. Timeshare estates will not be created with respect to Units. The estimated completion date for the Condominium is March 1, 2022.
- 3.2 Identification of Units. The Developer intends to construct one Building containing 12 residential Units and one (1) Commercial Unit. Each Unit shall be identified by a separate numerical or alpha-numerical designation. The designation of each of such Unit is set forth on *Exhibit B* attached hereto. *Exhibit C* consists of a survey of the Land, a graphic description of the improvement to be constructed thereon, including, but not limited to, the Building in which the Units are located, and plot plans thereof. Said *Exhibit C* together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative location and 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 occupies by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto, and (e) other appurtenances as may be provided by this Declaration or the Act.
- 3.3 Identification of Units. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:
- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersection with the perimetrical boundaries:
- (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling.
- (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

- (b) Perimetrical Boundaries. The Perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the boundaries of the unit extend to the interior surface of all windows, sliding glass doors and doors. All windows and doors shall be considered part of the Unit and shall not be a Common Element.
- (d) Utility Equipment and Conduits: The Units shall include all plumbing and electrical lines, equipment and fixtures located within the boundaries of the Unit, together with plumbing and electrical and other utility lines within Common Elements with serve the Unit only. The Unit shall not include electrical and plumbing lines, conduits, equipment, fixtures, pipes, wires, air passageways, ducts, or others utility lines running through or adjacent to the Unit which are utilized for or serve another Unit or the Common Elements, which items shall be made a part of the Common Elements.
- (e) Air Conditioning/Heating: Any air conditioning/ heating equipment which services only a single Unit shall be considered part of said Unit and not a Common Element.
- (f) Appliances: The Unit Owner shall own any electric doorbells/knockers, hot water heaters, refrigerators, dishwashers, and other appliances which are located within the boundaries of the Unit or the Limited Common Elements appurtenant to said Unit.
- (g) Fixtures: The Unit Owner shall own all interior fixtures which shall serve the Unit exclusively, including without limitation, all plumbing fixtures, utility and electrical fixtures and cabinets.
- (h) 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 C* hereto shall control in determining the boundaries of a Unit.

3.4 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, vering in the Owner of each such Unit the Exclusive right to use such Limited Common Elements.

- (a) Parking Spaces. Each Residential Unit will be assigned one (1) specific parking space as a Limited Common Element.
- (b) Commercial Parking Spaces. The parking spaces located outside and to the east of the Commercial Unit shall be restricted as follows:
  - a. They shall not be for residential parking by the Owners of any Residential Unit. Any Unit Owner using these spaces shall be subject to towing at their own expense.

- b. They shall be reserved for commercial use during normal business hours, and limited to short term commercial/retail parking.
- c. If guests of Residential Unit Owners use these spaces after business hours, they can leave cars overnight but must vacate by 8:30 am the next morning.
- d. Such other reasonable restrictions as defined and promulgated by the Association.
- e. The Commercial Unit Owner and the Association shall both have the right to post signage describing the parking restriction for these spaces.
- f. Any material change or vote related to the layout, use, or rules related to the Commercial Parking Spaces shall require the express written approval of the Owner of the Commercial Unit.

- (c) Storage Spaces. Each Unit will be assigned a single storage space as a Limited Common Element. The Developer and/or the Board shall have the right to assign additional storage spaces, if available to a Unit owner, for an additional consideration.
- (d) Balcony. Any Balcony (and all improvements thereto) as to which direct and exclusive access shall be afforded to a particular Residential Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit (s).

3.5 Common Elements. The Common Elements are for the exclusive use (except as herein provided) of Unit Owners and their family members, guests, tenants and invitees.

(a) The Condominium will contain the following Common Elements:

- (i) The Land.
- (ii) All parts of the Condominium Property which are not included within the Units.
- (iii) Parking. There will be 12 covered parking spaces and 4 uncovered parking spaces reserved for the usage of the Residential Unit Owners. The Developer shall have the absolute right to assign twelve parking spaces to Unit Owners (as Limited Common Elements) so long as the Developer shall own a Unit in the Condominium that is for sale to the public. All parking spaces not assigned by Developer to Owner of Units after the date that the Developer no longer owns a Unit for sale to the public in the Condominium shall become unassigned parking space for common use by all Residential Unit Owners, tenants and guests, as Common Elements, and shall be subject to such reasonable rules and regulations as may be promulgated by the Board to ensure the fair and shared usage of the non-exclusive parking spaces.
- (iv) Storage Units. There will be 12 total storage units. The Developer shall have the absolute right to assign storage units to Unit Owners so long as the Developer shall own a Unit in the Condominium that is for sale to the public. All storage units not Assigned by Developer to Owners of Units after the date that the Developer no longer owns a Unit for sale to the public in the Condominium shall become unassigned storage units for common use by all Unit Owners, tenants and guests.



- (v) First Floor. Located on the First Floor, there will be an Entrance Lobby with resident mailboxes, Elevator Lobby, Egress Lobby, Elevator, Egress Stairs, and Mechanical / Electrical Rooms.
- (vi) Second through Fourth floors. Located on the second through fourth floors there will be an Elevator, Egress Stairs, and corridor connecting the Dwelling Units.
- (vii) Utilities. There will be utility lines, facilities and equipment including without limitation, water distribution lines, sanitary sewer lines and equipment, storm drainage lines, fire lines and irrigation systems and equipment, located on the Condominium Property. In addition, there will be electrical conduit available to service electric power to designated parking spaces, however, any Unit Owner requesting electric service for a vehicle powered by electricity or a combination of electricity and other fuel, shall be obligated to reimburse the Association for the cost of installing an electric power station and related electric facilities to service the vehicle at the designated parking space and shall pay to the Association an initial annual charge of \$600.00. The initial annual charge is based on kilowatt hours estimated by certain manufacturers of electric vehicles and is subject to the annual review and adjustments by the Board of Directors of the Association.

3.6 Easements. The following easements are hereby created (in addition to any easements created under the Act), each to be a covenant running with the land of the of the Condominium Property, and in favor of the Association, individual and collective Unit Owners, the Developer, governments having jurisdiction, suppliers of utility services, and owners and occupants of adjacent lands, as the context may require.

- (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 al 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, cable television, communications and security system, and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other services or drainage facilities or the use of their easements. This Board of Directors of the Association or its designee shall have a right to access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and other similar systems, 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 such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of the emergency, entry shall be made on not less than one (1) days' notice (which

notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

- (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 Developer, as appropriate, or (iv) any repair damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or 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 residents, their guests and invitees, shall exist for pedestrian traffic over, through and across drive aisles, walks, and other portions of the common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Units. Any such lien encumbering easement as automatically shall be subordinate to the rights of Units Owners and the Association with respect to such easements.
- (e) Construction; Maintenance. The Developer (including its designees, constrictors, successors and assigns) shall have non-exclusive easement and rights, in its sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion determines that it is required or desired to do so. The refusal by Association or any Unit Owner to provide access to Developer to perform warranty repairs within ten (10) days after written request by Developer shall void such warranties and release Developer from any liability or obligation as to the warranted items which Developer sought to repair or replace.
- (f) Sale Activity. For as long as there are any unsold Units, The Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for guest accommodations, model apartments and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units within the Condominium and erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.
- (g) Association. The Association shall have an easement of access over, under and through the Condominium Property for the purpose of performing its lawful functions pursuant to this Declaration, including, without limitation, the maintenance of improvements, parking areas, utility lines and equipment, driveways, and landscaped areas.
- (h) Additional Easements. The Developer or Association, by and through the Board of Directors on behalf of all Unit Owners, shall have the rights to grant such additional

general ("blanket") and specific electric, gas or other utility, cable television, security system, communications, services, drainage or other easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such easements or facilities, in any portion of the Condominium Property and to grant access easements or relocate any existing access easements in any portion of the Condominium Property as the Developer or Board shall deem necessary or desirable, provided that such easements or the relocation of existing easements with not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

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

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

- 5.1 Percentage Ownership and Shares. The Allocation of percentage Shares in the Common Elements and Common Surplus, and the Percentage Share of the Common Expenses, appurtenant to each Unit is set forth in **Exhibit B** attached hereto and made a part hereof. The Allocation of Percentage Share was established by the Developer in the following manner:

- (a) The approximate area of each Unit was measured, in square feet, excluding Limited Common Elements. Such area for each Unit is hereafter referred to as its "Unit Area".
- (b) The total of the Unit Area of all Units is hereinafter referred to as the "Total Unit Area".
- (c) The Total Unit Area was thereafter divided into the Unit Area of each Unit to determine the Allocation of Percentage Shares for each Unit as set forth on **Exhibit B** to this Declaration.
- (d) The Commercial Unit is assigned a fixed share in the Condominium, and the Residential Units divide the remaining share as shown in **Exhibit B**.
  - a. The Commercial Unit Owner shall pay for its designated share of all common expenses, as billed by the Association, provided however, that it

shall also pay 100% of any expenses ordered or contracted by it that benefit only the Commercial Unit. For example, the Commercial Unit shall pay its designated share of trash pickup since all Unit Owners benefit from trash removal, but the Commercial Unit shall pay directly for 100% of the cost of any grease trap cleanup since only the Commercial Unit will utilize a grease trap. In the event of a discrepancy or lack of agreement as to whether a certain expense is to be shared by all Unit Owners or paid directly by the Commercial Unit Owner, then the Association's decision shall be binding on all Unit Owners. Nothing herein shall give the Commercial Unit Owner the right to cease paying for any common expense in the event that the Commercial Owner also provides or contracts for the same expense. For example, if the Commercial Unit engages a window cleaner daily, the Commercial Unit shall still pay its allocated share of the costs to clean the windows for the Units.

- 5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles of incorporation of the Association, except that the Commercial Unit Owner shall be entitled to two (2) votes.
6. Amendments. Except as described elsewhere herein, amendments to this Declaration may be affected 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 the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one third (1/3) of the members of the Association. Except as elsewhere provided, approvals of proposed amendment must be by affirmative vote of Unit Owners owning in excess of 66% of the Units. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Notwithstanding anything to the contrary contained herein, the Association reserves the right to amend this declaration and the Exhibits annexed hereto so as to correct any errors or materially and adversely affecting the rights of Unit Owners. Amendments enacted to correct errors or omissions may be approved by a majority of the Board of Directors of the Association.
- 6.2 By the Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Article of incorporation or the bylaws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent thereto. Further, the Developer shall not be permitted to make any amendment which requires the approval of Unit Owners under Section 718.110 (4) or (8) of the Act without first obtaining such approval.

6.3 Proviso. Unless otherwise provided specifically to the contrary in the Declaration (e.g., in Section 10 hereof), no amendment shall change the configuration or size of the any Unit in any material fashion, materially alter or modify the appurtenance to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) of the affected Unit(s), and all record owners of liens on the affected Unit(s), shall join in the execution of the amendment and same is also approved by a majority of the votes of the Association. Neither shall an amendment of this Declaration make any changes to Section 14 of this Declaration entitled "Insurance" or to Section 15 of this Declaration entitled "Reconstruction or Repair After Fire or Other Casualty" which materially affect mortgagees unless said mortgagees join in the execution of the amendment. In no event shall the consent or joinder of mortgagees be required unless the amendment materially affects the rights or interest of the mortgages or is otherwise required by the Federal National Mortgage Association of the Federal Home Loan Mortgage Corporation and such consent or joinder may not be unreasonable withheld. Any amendment to this Declaration which would affect the surface water management system (hereafter defined), including water management portions of the Common Elements, must have the prior approval of the Water Management District having jurisdiction.

6.4 Execution and Recording. An amendment, other than amendment made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate together with the amendment is properly recoded 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 the 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 promulgate amendment

## 7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements, appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of windows, window screens, sliding glass doors, the entrance door and all other doors within or affording access to a Unit or a balcony, electrical (including fixtures and wiring), plumbing (including fixtures and connections), heating and air conditioning equipment, fixtures and outlets, appliances, carpets and other floor

coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

Unit Owners shall be responsible to clean the interior and exterior of sliding glass doors and the interior of all windows. Association shall clean the exterior of windows. Unit Owners shall maintain the balcony appurtenant to their Unit(s) including resealing of flooring, replace flooring and waterproofing membranes on balconies and shall keep the same neat and tidy, except that in order to maintain a uniform appearance, the Association will paint the exterior walls, exterior of doors, and railings on balconies when deemed necessary by the Board of Directors of the Association.

The Association shall be responsible for cleaning and maintenance (including striping) of all parking areas including spaces assigned as Limited Common Elements.

- 7.2 Common Elements. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than certain Limited Common Elements as provided in Section 7.1). shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense. The Association shall be responsible for the operation and maintenance of the improvements, facilities and systems utilized in connection with the storm and surface water collection, retention, detention, drainage and disposal services located on the Condominium Property.
- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Unit or Units shall be the responsibility of the applicable Unit Owner(s), and not the Association.
8. Additions, Alterations or improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (distinguished from repairs and replacements) costing in excess of five percent (5%) of the annual budget in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate less than five percent (5%) of the annual budget in the aggregate in any 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 be considered a "Special Assessment" of the Unit Owners as provided in Section 13.2 hereof. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above stated purposes, regardless of whether the repayment of any part debt is made beyond that year. These restrictions and approval procedures shall be applicable instead of the provisions of Section 718.110(3) of the Condominium Act.
9. Additions, Alterations or improvements by Unit Owner.

- 9.1 Consent of the Board of Directors. Except as provided, no Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his or her Unit or any Limited Common Element 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 forty-five (45) 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 or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, and all other Unit Owners harmless from and to indemnify for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.
- 9.2 Additions, Alteration or Improvements by Developer. 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 non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the improvements). Notwithstanding the foregoing, none of the alterations described above may result in a change in the configuration or size of a Unit in any material fashion without the approval of the Owners of the Unit(s) affected, and the approval of all owners of mortgages and lines on the affected Unit(s), and unless the alteration is required by a governmental entity, the approval of a majority of total voting of the Condominium.
- 9.3 Proviso. Without limiting the generality of the provisions of paragraph 9.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non- structural, interior or exterior, ordinary or extraordinary, and (ii) change the layout or number of rooms in any Developer-owned Units, to the requirements of Section 9.2, above, if applicable.
10. [Reserved]
11. Operation of the Condominium by the Association, Powers and Duties
- 11.1 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 Bylaws and Articles of Incorporation of the Association, 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, the following:

- (a) The unfettered right to initiate and pursue legal actions to the maximum extent allowable by the Department and 718.1255 FS.
- (b) The irrevocable right to have access to each Unit and its Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein or performing extermination services, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.
- (c) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (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 upon prior request.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate to the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all time the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such are approved by a majority of the entire membership of the Board of Directors, or by such greater presented of the Board or Unit Owners as may be specified in the Bylaws within respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (g) The power to change a fee for the exclusive use of Common Elements by an Owner or tenant of an Owner.
- (h) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.



- (i) the power to acquire real and personal property. Personal property shall be acquired upon a majority vote of the Board of Directors, subject to Section 8 hereof. Real property shall be acquired upon a majority vote of the Board of Directors, provided that the requirements of section 8 pertaining to the Unit Owners' approval of cost in excess of the threshold amount stated therein (including the proviso as to the debt incurred) shall also apply to the acquisition of real property, provided further, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be made upon a majority vote of the Board of Directors, regardless of the price for same.
- (j) The authority to operate and maintain the improvements, facilities and systems utilized in connection with the storm and surface water collection, retention, detention, drainage and disposal services for the Condominium (the "surface water management system").
- (k) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of incorporation and Bylaws, Chapter 607 and 617, Florida Statutes and Act, in all cases except as expressly limited or restricted in the Act.

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

11.2 Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless if whether or not same shall have been approved by the Association pursuant to Section 9.1 hereof.

Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, and rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), the Association shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property including, without limitation, residents and their families, guests invitees, agents, contractors or subcontractors or for any property of any such person. Without limiting the generality of the foregoing:

- (a) It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the use of the

Condominium Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof;

- (b) The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Pinellas County, the City of Safety Harbor and/or any other jurisdiction or the person(s), even if assessment funds are chosen to be used for any such reason.
- (c) Any provision of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitation on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s) even if assessment funds are chosen to be used for any such reason.

Each Unit Owner (by virtue of his or her acceptance to title to his or her Unit) and each other person having an interest in or lien, upon, or making any use of, any portion of the Condominium Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all right, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.

As used in this Section, "Association" shall include within its meaning all of the Association's Directors, Officers, committee and Board members, employees, successors and assigns. The provisions of this Article shall also insure to the benefit of the Developer and its affiliates, which shall be full protected hereby.

- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his or her Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or Bylaws of the Association, applicable rules and regulations or applicable law, All approvals or actions required or permitted to be giving 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 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 Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by law) the operation, maintenance, repair and replacement of the Common Elements, cost of carrying out the power and duties of the Association and any other expenses designated as common Expenses by the Act, this Declaration, the Article or Bylaws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such charge shall be adopted consistent with the provisions of the Bylaws.

13 Collection of Assessments.

- 13.1 Liability for 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 coming due while he or she is in the Unit Owner. In the case of a conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his or her share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amount paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 13.2 Special Assessments. In Addition to Assessments levied by the Association to meet the Common Expenses of the Condominium, the Board of Directors may, except as otherwise provided in the Declaration, levy "Special Assessments" upon the following terms and conditions.
- (a) "Special Assessments" shall mean or refer to a charge against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature,
  - (b) Special Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board, provided that, if such Special Assessment, in the aggregate in any year, exceed or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, for any purpose other than the exercise of the Association's right to purchase a Unit pursuant to Section 18.2 of this Declaration, the Board must obtain approval of a majority of the Units represented at a meeting at which a quorum is attained.
- 13.3 Default in Payment of Assessments. Assessment and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent

(18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Unit for any unpaid Assessments on such Unit. The lien is effective and shall relate back to the recording of the Declaration, provided that as to intuitional First Mortgagees, the lien is effective from and after recording of the claim of lien. The claim of lien shall state the description of the Unit, the name of the Unit Owner, the name and address of the Association, the amount due and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Association and shall be recorded in the Public Records of Pinellas County, Florida. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid but in no event for a period exceeding one year, unless lien enforcement action has commenced in a court of competent jurisdiction during such a year. The one-year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Unit Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon and costs and attorneys' fees which are due, and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. Upon full payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage or real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30 ) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year in which the clam of lien is filed to be accelerated and shall thereupon be immediately due and payable. In the event that the amount of such installments changes during said period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of the same taking effect.

Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment.

- 13.4 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is field, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be giving by delivery of a copy of it to the Unit Owner or by certified or registered mail, return requested, addressed to the Unit Owen at the last known address, and upon such mailing, the notice shall be deemed to have been

given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

- 13.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.
- 13.6 Institutional First Mortgagee. In the event a first mortgagee or other purchaser shall obtain title to a Unit as a result of a foreclosure action in which the Association has been joined as a defendant, or as a result of a deed given in lieu of foreclosure or in satisfaction or debt, such acquirer of title or its successors and assigns ("first mortgagee") shall be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure or in satisfaction or debt. However, the first mortgagee's liability as foreshall be limited to (i) the Unit's Common Expenses or Assessments which accrued or came due during the twelve(12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association or (ii) one percent ( 1%) of the original mortgage debt, whichever is less. The provisions of this Section 13.6 shall not apply unless the first mortgagee joins the Association as a defendant in the foreclosure action. Joinder is not required if, on the date the complaint is filed, the Association was dissolved, administratively or otherwise, or did not maintain an office or agent for service of process at a location which was known or reasonably discoverable by first mortgagee by the date the foreclosure action was filed. The person acquiring title shall pay the amount owed to the Association within thirty (30) days of transfer of title. The unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer and its successors and assigns. A first mortgagee acquiring title to a Condominium Parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such Condominium Parcel, whether or not the Unit is occupied, be excused the payment of same or all of the Common Expenses coming due during the period of such ownership.
- 13.7 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner of his or her designee, or a Unit mortgagee or his or her designee, the Association shall provide a certificate stating all assessments and other money owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.

13.8 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors, initially, Assessments will be collected monthly.

14 Insurance. Insurance covering the Condominium Property and the Association 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 or provider authorized to do business in Florida.

(b) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

(c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurance Trustee (if appointed), and copies of all policies and endorsements, thereto shall be deposited within the insurance Trustee (if appointed).

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

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

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

(a) Casualty. The Building, including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies) – but excluding (i) all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and (ii) electrical fixtures, appliances, air conditioners or heating equipment, water heaters and built-in cabinets which are located in Units and the repair and replacement responsibility of Owners – and all improvements located on the Common Elements or Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or

Association Property (collectively the “insured Property”), shall be insured against loss (excluding loss by flood and other causes excluded from typical condominium package policy) in an amount not less than 100% of the full insurable replacement cost 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 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 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.
- (c) Worker’s Compensation. Worker’s Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance. The Board of Directors shall determine the nature and amount (if any) of coverage to be obtained but as a minimum, such coverage as to satisfy mandatory requirements of federal law.
- (e) Fidelity Insurance. As required by the Act adequate insurance or fidelity bonding covering all persons who control or disburse Association funds. The insurance policy or fidelity bond shall cover the maximum amount of funds that will be in the custody of the Association or its management agent at any one time.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements, extending the applicable portions of the coverage described above to all Associations Property, where such coverage is available and determined by the Board of Directors to be desirable.
- (g) Other Insurance. Such other insurance as the Board of the directors of the Association shall determine from time to time to be desirable.
- (h) Policy Provisions. When appropriate and obtainable, each of the foregoing policies shall waive the insurer’s to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertaking. Additionally, if appropriate and obtainable, each policy shall have provide that any insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- (i) Disclaimer. All Unit Owners, mortgagees and others should be aware of the fact that because of exclusions from coverage, changes in construction cost, land and profit components in sales prices and other factors, the amount of insurance coverage available in the event of substantial damage to the Condominium Property, the proceeds available for reconstruction and/or retirement of mortgage debt may not be entirely sufficient for such purposes. Accordingly, all persons are advised to consult with their own insurance providers as to what supplemental coverage may be available under their own policies to mitigate any impact of a shortage of proceeds for Association policies.
- 14.3 Additional Provisions. If available, all policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units.
- 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 or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors or Officers of the Association. The insurance Trustee shall not be liable for payment of premiums, not for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the insurance Trustee:
- (a) Insured Property. Proceeds on account of damage to the insured Property shall be held in undivided shares for each unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the insured Property so damaged includes property lying within the boundaries of specific Units or their balconies, that portion of the proceeds allocable to such property shall be held as if that portion of the insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units or their balconies 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 affected Owner, which cost allocation shall be determined in the sole discretion of the Association.

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

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

- (a) Expenses of the Trust. All expenses of the insurance Trustee shall be first paid, or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such cost 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,
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the insurance Trustee (if appointed) may rely upon a certificate of the Association made by the President and Secretary as to the names of the Unit Owners and their mortgagees, and their respective shares of the distribution.

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

14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner arising from occurrences within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. The foregoing shall also apply to balconies of Units, assigned storage lockers, assigned parking spaces/garages, and other Limited Common Elements.

- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Insurance Trustee. The board of Directors of the Association shall have the option in its discretion of appointing an insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
- 15 Reconstruction or Repair After Fire or Other Casualty.
- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such and restoration in appropriate progress payments.

If 75% or more of the insured Property ( and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Element duly and promptly resolve not to proceed with the repair or restoration thereof and a majority of institutional First Mortgagees approve such resolution, The Condominium Property will not be repaired and provided an instrument terminating 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 which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee ( if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of

insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated cost of such work. The insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Element, as well the Owners of all Units, Limited Common Elements and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

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

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

(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 \$500,00.00 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 \$500,00.00, then the construction fund shall be disbursed in payment of such cost in

the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all cost 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 coats of repair for his portion of the Optional Property. All proceeds must be used to effect repair to the Optional Property, and if insufficient to complete such repair, the Owner shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repair have been affected shall be distributed to the Unit Owners and their mortgagee jointly in accordance with their respective share of such proceeds determined as provided in Section 14.5 above.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of cost of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner stated in 14.5 above; 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 provision herein, the insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, not to determine whether the disbursements from the construction fund are to be made upon the order of the association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amount to be paid.

15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall

be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments shall be in proportion to all of the Owners' respective shares in the Common Elements. In the event of insufficient proceeds of insurance on Optional Property, the shortage shall be the individual responsibility of the Owners thereof.

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

16 Condemnation.

- 16.1 Deposit of Awards with Insurance Trustee. the taking of portions of the Condominium Property by the exercise of the power of eminent domain shall deemed to be a casualty, and awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the insurance Trustee, and in the event of failure to do so, in the discretion of the Board of Directors of the Association, or the amount of that award shall be set off against the sums hereafter made payable to the defaulting Owner (and if the award exceeds such sums, the Association shall have the right to bring legal action against 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 repair after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit or its Limited Common Elements 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 or its Limited Common Elements shall be used for the following purposes in the order stated and the following changes 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 the individual responsibility of the Owner of the Unit.
- (b) Distribution of Surplus. The balance of the award in respect of the Unit or its Limited Common Elements, 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 of the Unit is reduced by the taking, the percentage representing the share in the Common Element 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:
  - (j) Add the total of all percentages of the 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. No. Limited Common Elements shall be used in the aforesaid calculations.

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 Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit is not so habitable; second, to the Association for any due and unpaid Assessments, third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association, provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.

(c) Adjustment of Shares. The shares in the Common Elements 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 affected by restating the shares of continuing Unit Owners as follows:

- (i) Add the total of all percentages of all Units of Continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4 (c) hereof (the "percentage Balance"); and
- (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4 (c) hereof, by the Percentage Balance.

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

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

(e) Alternative Dispute Resolution. 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 In accordance with the alternative dispute resolution mechanisms defined in 718.1255 FS.

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

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

17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium 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 single-family residence only, except as otherwise herein expressly provided (and the Commercial Unit which shall be used for commercial uses). A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such person's families, provided that the Unit Owner or other permitted must reside with his/her family: (i) the individual Unit Owner, (ii) an officer, director, stockholder, employee or designee of such corporation, (iii) a partner, employee or designee 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 or subleased Unit must be the following persons, and such persons families who them: (i) and individual lessee or sublessee, (ii) an officer, director, stockholder, employee or designee of a corporation lessee or sublessee, (iii) a partner, employee or designee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. In no event shall occupancy of a Unit (except for temporary occupancy by visiting guests) exceed the greater of six (6) persons in the entire Unit or two (2) persons per bedroom. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this subsection 17.1 shall not be applicable to Unit used by the Developer for models, sales or other offices or management services.

As used herein, "family" or words of similar import be deemed to include a spouse, children, parents, brother, sister, grandchildren and other persons permanently cohabiting the Unit as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Unit. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Section 17 and the Board of Directors of the Association shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

17.2 Children. Children shall be permitted to reside in Units but shall be subject to the age restrictions, imposed as to use of certain Common Elements, as provided in the rules and regulations of the Association.

17.3 Pets. Each Unit Owner (regardless of the number of Joint Owners) may maintain no more than three (3) household pets in his or her Unit, without any weight limitation, to be limited to dog(s) or cat(s) (or other household pet defined as such and specifically permitted by the Board of Directors of the Association), provided it is not kept, bred or maintained for any commercial purpose, does not become a nuisance or annoyance to neighbors and is first registered with the Association. Dangerous breed dogs, as determined by the Association, including, but not limited to Pit Bulls, Dobermans, Chows or any dog bred with a dangerous breed as defined by The Board of Directors of the Association, shall not be allowed. No one other than the Unit Owner is permitted to keep any approved pets in or on the Condominium Property (including Units). The Board of Directors of the Association shall have the right to require removal of any pet that is deemed by the Board in its discretion to be a nuisance or annoyance. No reptile or wildlife shall be kept in or on the Condominium



Property (including Units). Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash no more than six (6) feet in length at all times when outside the Unit and shall be taken only within areas, if any, designated for such purpose by the Association. No pets may be kept in/on balconies when the Owner is not in the Unit. Without limiting the generality of Section 19 hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners, however, the fine may not exceed \$100 per violation, or \$1,000 in the annually aggregate annually (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section 17.3 shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that a bird is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors. However, no domestic bird of a variety which will emit sounds that can be heard in contiguous units may be kept by a Unit Owner in a Unit. Notwithstanding any of the foregoing, however, neither this Section 17.3, any other provision of this Declaration nor any rule or regulation of the Association shall be enforced, adopted or amended so as to prohibit or unlawfully restrict any right of the Owner or occupant of a Unit to keep and use a seeing eye dog or other assistive animal for purposes provided for in any local, state or federal law, statute or ordinance protecting the applicable person's right to do so. Violation of this provision regarding pets shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners, however, the fine may not exceed \$100 per violation, or \$1,000 in the annual aggregate (as may be provided in this Declaration and promulgated Rules and Regulations), and/or to require any pet to be permanently removed from the Condominium Property. The Unit Owner shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having an animal in or on the Condominium Property. If a dog or any other animal becomes a nuisance and/or is obnoxious to other Unit Owners by barking or otherwise, the Unit Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Unit Owner, upon written notice by the Association, will be required to remove the animal. Pets shall not be permitted to become nuisances to Unit Owners or occupants of Units and are subject to removal from the Condominium at the discretion of the Board of Directors after a hearing conducted in the same manner as hearings for fines.

17.4 Alterations. Without limiting the generality of Section 9.1 hereof and subject to Section 10 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to installing any electrical wiring, television or radio antenna/ machinery, or air conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Board of Directors of the Association (in the manner specified in section 9.1 hereof). Approval of the Board of Directors of the Association shall not be required for repainting, re-carpeting a previously carpeted area, or otherwise redecorating the interior of a Unit provided the same complies with all other terms and conditions of this Declaration.

17.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

- 17.6 Nuisances. No nuisances (as reasonably determined by the Board of Directors of the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of unreasonable 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. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 17.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the same shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over the same, 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. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17-7, No activity specifically permitted by this Declaration shall be deemed a violation of this Section.
- 17.8 Floor Coverings and Sound Insulation. Without limiting the generality of the approval requirements set forth in Section 9 of this Declaration, no hard-surfaced floor coverings shall be installed in any Unit or its appurtenant Limited Common Elements unless same is installed with an acoustical insulation or alternative sound-absorbing backing meeting the requirements of the Board of Directors of the Association. A waterproofing membrane system approved by the Association must be installed under all balcony floor coverings.
- 17.9 Exterior Improvements; Landscaping. Without limiting the generality of sections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, screens, window tinting, furniture, fixtures and equipment), or on the interior side thereof so as to be visible to the exterior, without the prior written consent of the Board of Directors of the Association. Specifically, no "For Rent", "For Sale" or any other sign shall be displayed or exposed to view by a Unit Owner or other occupant of a Unit. To insure a uniform appearance on the exterior of the Building, all window coverings of Units, including, but not limited to verticals, shades, sheers, curtains, drapes, miniblinds and venetian blinds shall be faced on the exterior with white or neutral colored material approved by the Association. The furnishings and decorations which Unit Owners may place in, on or about the balcony may be subject to such additional rules and regulations as the Board of Directors of the Association may adopt from time to time. Provided however this paragraph shall not be interpreted to preclude any unit owner from displaying one portable, removable United States flag in a respectful way and, on within 7 days before and after 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 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any Declaration rules or requirements dealing with flags or decorations, and the Association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the

unit owner of a religious object not to exceed 3 inches wide, 6 inches high and 1.5 inches deep.

17.10 Handicapped Parking, Commercial/Recreational Vehicles and Trailers. Parking spaces designated as "handicapped parking" within the Common Elements of the Condominium are reserved for the use of the handicapped residents and guests. Handicapped parking spaces may be initially assigned to non-handicapped Unit Owners; however, such spaces are designated for use by handicapped Unit Owners with vehicles bearing handicapped license or decal in accordance with Florida law. In the event a handicapped Unit Owner requests use of a handicapped parking space which has been assigned to a nonhandicapped Unit Owner, the space shall be reassigned by the Association to the handicapped Unit Owner as a Limited Common Element appurtenant to his or her Unit. The non-handicapped parking space assigned initially to such handicapped Unit Owner shall be reassigned by the Association to the Unit Owner who previously held the handicapped parking space, and upon reassignment, such space shall become a Limited Common Element appurtenant to the non "handicapped Owner's Unit. Except as permitted below, no commercial vehicles, campers, mobile homes, recreational vehicles or boat or other trailers shall be kept on the Condominium Property, in exterior parking areas or within covered parking spaces. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes. In general, vehicles shall have no more than four (4) wheels and two (2) axles. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether same is a commercial vehicle. The foregoing shall not prohibit, however, (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the occupants thereof or the Association or (ii) vans with windows which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics. All vehicles kept on the Condominium Property shall be operational and in good condition. Only one vehicle is allowed to be parked in a parking space. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board of Directors shall be binding and conclusive.

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

17.12 Uses of the Commercial Unit. The Commercial Unit may be used for any commercial purpose consistent with applicable zoning law. Notwithstanding the foregoing, the Commercial Unit may not be used for any of the following uses: tattoo parlors, sales or leasing of material of a pornographic nature, bingo parlors or off-track betting, check cashing, work, labor pool or staffing agencies, any use that requires the storage or handling of hazardous substances in containers larger than 5 gallons.

17.12 Changes in Permitted Uses. No amendments to this Section 17, any other provision of this Declaration governing the use of units or the Common Elements or to any Rules and

Regulations of the Association shall operate to prohibit the keeping of a pet, parking of a vehicle or teasing or occupancy of a Unit where same was (i) permitted prior to the effectiveness of the amendment, (ii) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. Likewise, no improvement made to or about any Unit which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.

18. Selling, Leasing and Mortgaging of Units. Units may be made subject to mortgages without restrictions, but sales and leases of Residential Units shall be subject to the provisions of this Section 18.

181 Board Approval. There shall be no sale, lease or renewal of a lease, or transfer of interest/ legal or beneficial, nor transfer of possession of a Unit without the prior written approval of the Board of Directors of the Association. In the event a corporation, partnership, trust or other legal entity owns a Residential Unit, the transfer of all or substantially all of the beneficial ownership of such entity shall be considered a transfer of interest in the Unit. to the event of leasing of Residential Units, the Board shall have the right to require that a substantially uniform form of lease be used. No portion of a Unit (other than an entire Unit) may be rented. All leases of Units shall provide (and shall be automatically deemed to provide, even without an express statement) that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation, Bylaws, and rules and regulations of the Association. No Unit lease shall be valid or approved for a term of less than six (6) months or for a maximum of two (2) times per calendar year, Regardless of whether or not expressed in the applicable lease, the Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of his or her tenant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration, the Articles, Bylaws and of any and all rules and regulations of the Association. The provisions of this Section 18.1 shall not apply to a transfer or purchase by Institutional First Mortgagees which acquire title as a result of their mortgage lien on the unit/ regardless of whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall this Section 18.1 require approval of a purchaser who acquires title to a Unit at a duly advertised public sale, with open bidding provided by law, including but not limited to an execution sale, a foreclosure sale, a judicial or a tax sale. No fee shall be charged by the Association in connection with the transfer or approval which is in excess of the expenditures reasonably required for such transfer, nor Shall the expense exceed the fee permitted under the Act, from time to time, which at the time of recording of this Declaration is \$100.00. Any Unit Owner desiring to sell, lease or deliver possession of a Unit shall submit to the Board an application for approval, which application shall be in writing and in a form approved by the Association, and shall provide the name, address, and telephone number of the desired purchaser or tenant, the names of all intended occupants of the Unit, together with such other information as the Board may reasonably require. The Board must either approve or disapprove the request within ten (10) days after its receipt of the request or such supplemental information as it may reasonably require, and shall do so in a fair, reasonable and non-discriminatory manner. If a sale is approved, a recordable Certificate of Approval shall be executed by the Association to be recorded at the expense of the purchaser. If a lease for a Unit is approved, a written notice of approval will be provided by the Association. The Boards failure to give the Unit Owner

the Certificate of Approval or written notice of approval, or written notice of disapproval within the ten (10) day period shall be deemed to be the Board's consent to the same.

Commercial Unit Excepted: Notwithstanding the foregoing, the approval provisions related to transfer or sale or lease of a Unit shall NOT apply to the Commercial Unit. The Owner of the Commercial Unit shall have the right to sell or lease to any party, in its sole discretion, provided that the buyer or tenant shall remain subject to the other terms of this Declaration. Similarly, the Owner of the Commercial Unit shall have no approval rights over the sale or lease of a Residential Unit.

18.2 Option of Association: In the event any Unit Owner desires to sell, or lease his or her Unit/ the Association shall have the option to purchase or lease any such Unit upon the same terms and conditions as are offered by the Unit Owner to any third party, subject to the following:

(a) Prior to the sale, rental, lease or transfer of any unit to any person other than the transferor's spouse, a member of his or her immediate family, or a wholly owned corporation, the Unit Owner shall notify the Board in writing of the name and address of the person to whom the proposed sale, rental, lease or transfer is to be made the terms and conditions of the sale or lease and provided a copy of the purchase agreement or lease, with such other information as may be reasonably required by the Board.

(b) Within ten (10) days after its receipt of said notice and such supplemental information as it may reasonably require, the Board may exercise its right to purchase or lease, in writing, and shall promptly notify the Unit Owner of its decision.

(c) If the Board notifies the Unit Owner of its intent to exercise this option, it shall deliver to the Unit Owner the deposit required under the terms of the proposed sale or lease within the above mentioned ten (10) day period and shall then be obligated to close the sale or lease of the Unit in accordance with the terms and conditions of the proposed sale or lease agreement previously furnished to it. If the Board furnishes the Unit Owner with written notice of its intent to exercise the option, but fails to deliver the required deposit within the ten (10) days period, such failure shall be deemed to be a consent to the sale or lease to the contract purchaser or tenant, Approval of the sale constitutes a waiver of the option.

(i) If the Board timely notifies the Unit Owner of its exercise of this option and accompanies its notice with the required deposit, the Association's obligation to purchase the Unit as provided herein may be assigned by the Association to any member or members as shall be determined solely by the Association.

(ii) Upon receipt of the deposit and the Board's notice of intent to exercise the option, the selling Unit Owner may either close the proposed sale of his or her Unit with the Association or a member or members to whom the

Association's obligation to purchase the Unit has been assigned or withdraw the offer specified in its notice to the Board. If the Association or the member to whom the option has been assigned fails to close the proposed sale under the terms and conditions of said notice, the deposit previously delivered by the Association shall be retained by the Unit Owner as liquidated damages and the Unit Owner shall thereafter be free to consummate the transaction with the party who made the original bona fide offer,

- 18.3 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Units appurtenant interest in the Common Elements.
- 18.4 Gifts and Devises etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.
- 18.5 Parking Spaces. No parking space shall be assigned to a person or entity who/which is not also an Owner of a Unit. Parking spaces shall become upon assignment a Limited Common Element appurtenant to the Unit to which it is assigned.
- 18.6 Commercial Leases. The Owner of the Commercial Unit shall be entitled to sign a lease for the Commercial Unit for up to ten (10) years. The Board of Directors and the Association shall have the right only to confirm that the intended use does not violate applicable law or this Declaration, but otherwise shall have no right to approve or reject a lease of the Commercial Unit. The Commercial Unit shall remain one Unit, but the Owner shall have the right to divide the interior of the Commercial Unit if Owner desires to lease the space to more than one commercial tenant.
19. Compliance and Default. Each Unit Owner and every occupant and tenant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 19.1 Enforcement,
- a. The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days. The hearing shall be held before a committee of other Unit Owners appointed by the

Board of Directors of the Association. If the committee does not agree with the fine, the fine may not be levied. The notice shall include:

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

b. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

- 19.2 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his or her intentional act, negligence, misuse or neglect or by that of any member of his or her family or his or her 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 fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages,
- 19.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys\* fees (including appellate attorneys' fees).
- 19.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, 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 (unless earlier terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration) for a term of thirty (30) years from the date this Declaration is recorded, after which time the covenants and restrictions contained in this Declaration shall be automatically extended for

successive periods of ten (10) years, unless prior to the end of such thirty (30) year period or prior to the end of any successive ten (10) year period the Condominium form of ownership is terminated in accordance with the requirements of the Condominium Act.

21. Additional Rights of Mortgagees and Others.

21.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

21.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance

21.3 policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium } and (v) any proposed action which requires the consent of a specified number of mortgage holders.

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, as they may be amended from time to time including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein,

23. Disclaimer of Warranties. DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT ONLY THOSE SET FORTH IN SECTION 718.203 OF THE ACT. 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 THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

24. Additional Provisions.

24.1 Notices. All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one (1) address which the Developer initially identifies for that purpose and thereafter as one (i) or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing} whichever shall first occur.

24.2 Interpretation. The Board of Directors of the Association Shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

24.3 Mortgagees. Anything herein to the contrary notwithstanding (except as provided in Section 13-5 hereof) 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.

24.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, or enforcement shall control over those hereof,

24.5 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.

- 24.6 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.
- 24.7 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.
- 24.8 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.
- 24.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of 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.
- 24.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium Property 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,
- 24.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 24.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

25. Rights of Developer. In addition to the rights which the Developer has by common law and pursuant to the Act/ the Developer shall have the following rights:

25.1 Developer Control. Section 718.301(1) of the Condominium Act provides as follows:

(1) If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of an election for the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created prior to the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

- (d) Association funds or control thereof.
- (e) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.
- (f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.
- (g) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer had knowledge of at any time in the development of the condominium.
- (h) Insurance policies.
- (i) Copies of any certificates of occupancy that may have been issued for the condominium property.
- (j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year prior to the date the unit owners other than the developer took control of the association.
- (k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.
- (l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.
- (m) Leases of the common elements and other leases to which the association is a party.
- (n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (o) All other contracts to which the association is a party.
- (p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:
  - 1. Roof.
  - 2. Structure.
  - 3. Fireproofing and fire protection systems.

4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

(5) If, during the period prior to the time that the developer relinquishes control of the association pursuant to subsection (4), any provision of the Condominium Act or any rule promulgated thereunder is violated by the association, the developer is responsible for such violation and is subject to the administrative action provided in this chapter for such violation or violations and is liable for such violation or violations to third parties. This subsection is intended to clarify existing law.

(6) Prior to the developer relinquishing control of the association pursuant to subsection (4), actions taken by members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

(7) In any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chapter 455, chapter 471, chapter 481, chapter 489, or chapter 633, such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

(8) The division has authority to adopt rules pursuant to the Administrative Procedure Act to ensure the efficient and effective transition from developer control of a condominium to the establishment of a unit-owner controlled association.

25.2 Easements, Until such time as Developer has completed all of the contemplated improvements and sold all of the Units that will ultimately be contained within the Condominium Property, easements, including but not limited to ingress and egress, are hereby reserved and shall exist through and over the Condominium Property as may be required, convenient, or desired by Developer for the completion of the

contemplated improvements and the marketing and sale of said Units. Neither the Unit Owners or the Association, nor their use of the Condominium Property shall interfere in any way with such completion and sale.

- 25-3 Sale of Units. The Developer shall have the right to transact any business necessary to consummate the sale of Units, including but not limited to, the right to install and maintain a sales office and advertising on the Condominium Property, use the Common Elements and, notwithstanding anything to the contrary contained herein, the Developer may maintain and use sales offices, promotion and development offices, models and Units retained by the Developer, or owned by the Developer, or the use of which has been reserved to the Developer in this Declaration or by contract or otherwise lawfully enforceable as a contract obligation by the Developer against the Association or any of the unit Owners other than the Developer, so long as such use shall also conform with applicable laws, zoning, rules and ordinances of the appropriate governmental jurisdictions. Specifically, Developer shall have the right to use Units owned by the Developer as model units for promotion and sales purposes.
- 25-4 No Board Action Without Developer's Consent. During the period that Developer holds any Units for sale in the ordinary course of business none of the following actions may be taken by the Association, either through an act of its Board of Directors or as membership, without the Developer's approval in writing:
- (a) Assessment of the Developer as Unit Owner for Capital Improvements;
  - (b) Any action by the Association that would be detrimental to the sale of Units by the Developer; however, an increase in assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units for the purpose of this paragraph.
- 25.5 Developer's Rights with Respect to Common Elements. The Developer reserves every right necessary or desirable relative to the Common Elements and the Condominium Property in general for the following purposes: the Furnishing of the Condominium Property, the sale or mortgage of the Condominium Units; and Assignments of parking spaces and storage lockers to Unit Owners during the period of time that the Developer holds any Unit for sale in the ordinary course of business.
- 25.6 Sale Subject to A Lease. The Developer does not propose a program of leasing Units but does reserve the right to lease any individual unit at its discretion prior to the sale of the Unit; provided that any lease shall have a term not to exceed twelve (12) months and shall terminate prior to conveyance of title by the Developer to the purchaser of the leased Unit, unless the Developer and such purchaser shall otherwise agree, in writing, to convey subject to any such lease.



26. Surface Water Management System Facilities. The term "Surface Water Management System Facilities" shall mean all surface water management system facilities within the Condominium Property including but not limited to inlets, ditches, swales, culverts, vaults: weirs, water control structures and retention and detention areas. The Surface Water Management Facilities are part of the Common Elements to be maintained by the Association. The Association shall have full responsibility as to operation, maintenance, repair, replacement and re-inspection reporting of the Surface Water Management System Facilities in accordance with the terms of the Environmental Resource Permit ("Environmental Resource Permit"), issued by the District, as amended from time to time. All costs of operating, maintaining, repairing, replacing, inspecting and reporting as to the Surface Water Management System Facilities incurred by the Association are Common Expenses. If the Association shall dissolve, the Surface Water Management System Facilities shall be conveyed to an appropriate governmental unit or public Utility. If it is not accepted, then the Surface Water Management System Facilities shall be dedicated to a nonprofit corporation similar to the Association. All Unit Owners shall be jointly and severally responsible for the operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of the Environmental Resource Permit unless and until an alternative entity assumes responsibility for the operation and maintenance of the Surface Water Management System Facilities in accordance with this Section 26. Developer, the Association and their respective successors and assigns shall have a perpetual easement for drainage, flowage and irrigation and reasonable right of access for persons and equipment over, upon and under the Common Elements for the installation, operation, maintenance, repair, replacement, alteration, expansion, and inspection of the Surface Water Management System Facilities. No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities relating to the Surface Water Management System Facilities include but are not limited to: digging or excavation; depositing fill, debris or any other material or item; construction or altering any water control structure; or any other construction to modify the Surface Water Management System Facilities. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Environmental Resource permit may be conducted without specific approval of the district. The District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities. Any proposed amendment under and to this Declaration which would affect the Surface Water Management System Facilities, or the operation and maintenance of the Surface Water Management System Facilities shall require the prior written approval of the District.

EXHIBITS:   A     LEGAL DESCRIPTION  
              B     ALLOCATED SHARES PER UNIT  
              C     DEPICTION AND FLOOR PLANS  
              D     BYLAWS OF THE ASSOCIATION



IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 10<sup>th</sup> day of February, 2022

Signed, sealed and delivered  
In the presence of:

Harbour Pointe West, LLC  
a Florida limited liability company

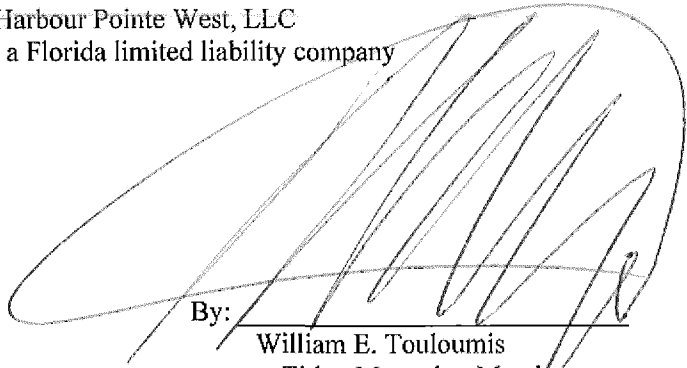
  
BORIS FRIDKIN

Printed Name:

James DeGross

Printed Name:

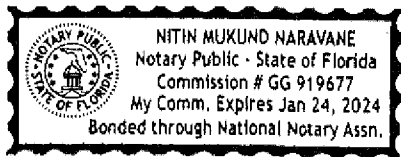
STATE OF FLORIDA  
COUNTY OF PINELLAS



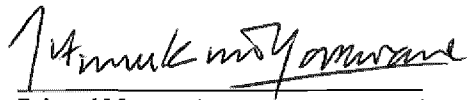
By:

William E. Touloumis  
Title: Managing Member

The foregoing instrument was acknowledged before me the 10<sup>th</sup> day of FEB, 2022  
By William E Touloumis Managing Member of Harbour Pointe West, LLC a Florida limited liability company, on behalf of the company. He is [  ] personally known to me or [  ] has produced \_\_\_\_\_ as identification.



[NOTARIAL SEAL]



Printed Name NITIN M. NARAVANE  
Notary Public - State of Florida  
My Commission Expires: JAN 24, 2024  
My Commission No: GG 919677

JOINDER

THE RESIDENCES OF HARBOUR POINTE WEST CONDOMINIUM ASSOCIATION, INC, a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF THE RESIDENCES OF HARBOR POINTE WEST CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal be affixed this 10<sup>th</sup> day of FEBRUARY 2022

Signed, sealed and delivered

THE RESIDENCES OF HARBOUR POINTE WEST CONDOMINIUM ASSOCIATION, INC a Florida corporation not for profit

In the presence of:

*[Handwritten Signature]*  
BORIS KRIPKIN

Printed Name

*[Handwritten Signature]*

By:

Name: William E. Touloumis  
Title: PRESIDENT

James DeGross

Printed Name:

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing joinder was acknowledged before me this 10<sup>th</sup> day of FEB 2022 by William E. Touloumis, as President of THE RESIDENCES OF HARBOUR POINTE WEST CONDOMINIUM ASSOCIATION, INC, a Florida corporation not for profit, on behalf of said corporation. He is personally known to me.

*[Handwritten Signature]*

Printed Name: NITIN M. NARAYANE  
Notary Public – State of Florida  
My Commission Expires: JAN 24, 2024  
My Commission Number: GG 919677

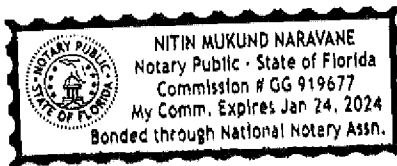


EXHIBIT A  
TO DECLARATION OF CONDOMINIUM

Legal Description

LOT 5, HARBOUR POINTE WEST, RECORDED IN PLAT BOOK 144,  
PAGE 21, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

EXHIBIT B  
TO DECLARATION OF CONDOMINIUM  
Unit Allocated Shares

**THE RESIDENCES AT HARBOUR POINTE WEST**

Unit Share Designations

	Unit	Area	Allocated Share
Commercial Unit	101	2852	13%
Unit	202	1748	9%
	201	1546	8%
	203	1267	6%
	204	1278	6%
	302	1748	9%
	301	1546	8%
	303	1267	6%
	304	1278	6%
	402	1748	9%
	401	1546	8%
	403	1267	6%
	404	1278	6%
	Subtotal Residential	17517	87%

EXHIBIT C  
TO DECLARATION OF CONDOMINIUM

Layouts and Depiction of Building



Exterior View from Southeast, looking Northwest

# The Residences at Harbour Pointe West

## LIMITS OF UNITS

LIMITED COMMON ELEMENTS INCLUDE BUT ARE NOT LIMITED TO: PARKING SPACES, STORAGE UNITS, AND BALCONIES.

COMMON ELEMENTS INCLUDE BUT ARE NOT LIMITED TO: ELEVATOR, SHAFTS, LOBBIES, STAIRS, EXTERIOR WALLS AND STRUCTURAL COLUMNS.

EACH UNIT SHALL INCLUDE THAT PART OF THE CONDOMINIUM PROPERTY CONTAINING THE UNIT THAT LIES WITHIN THE FOLLOWING BOUNDARIES:

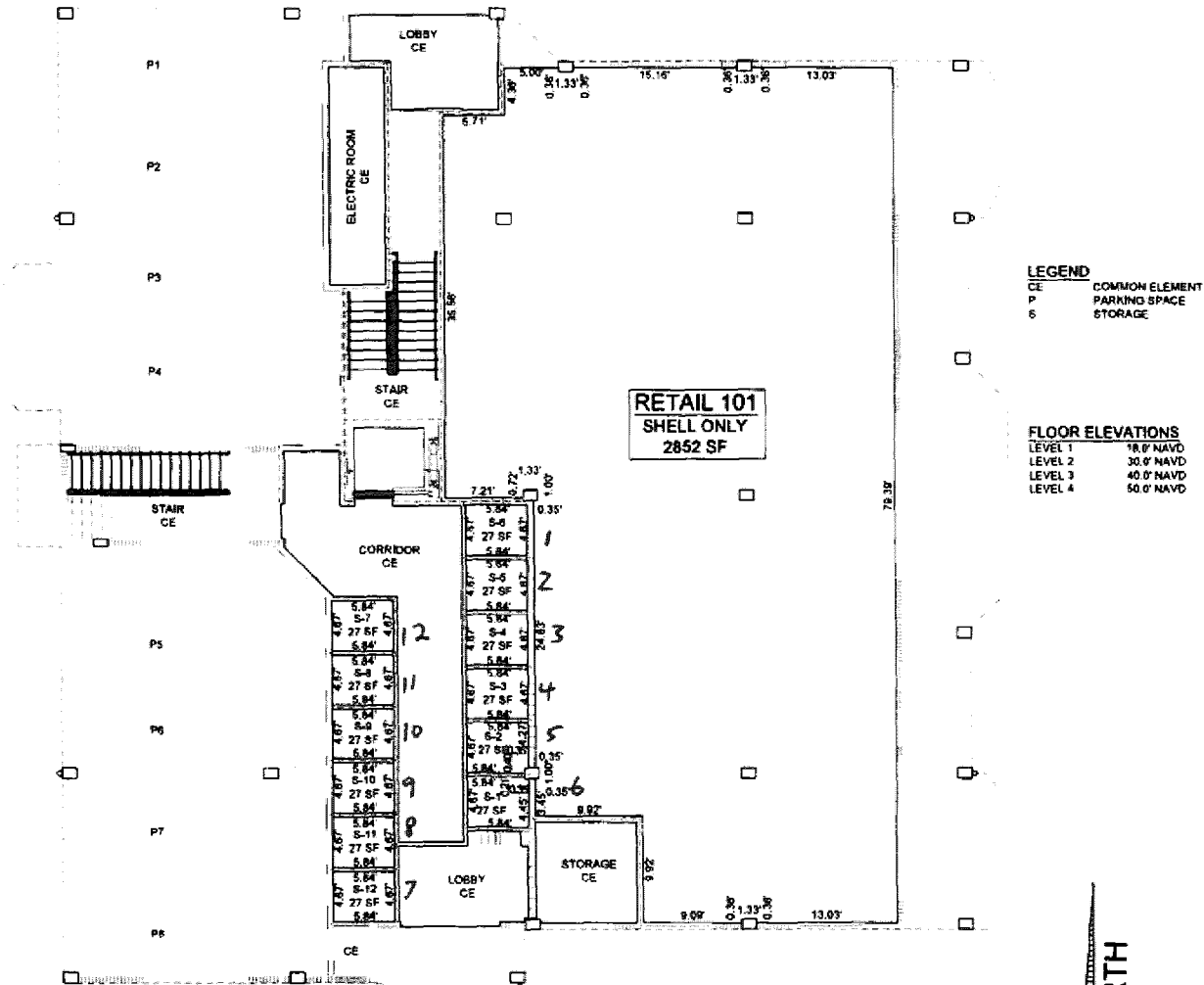
UPPER BOUNDARIES. THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE CEILING.

LOWER BOUNDARIES. THE HORIZONTAL PLANE OF THE UNFINISHED UPPER SURFACE OF THE FLOOR OF THE UNIT.

PERIMETRICAL BOUNDARIES. THE PERIMETRICAL BOUNDARIES OF THE UNIT SHALL BE THE VERTICAL PLANES OF THE UNFINISHED INTERIOR SURFACES OF THE WALLS BOUNDING THE UNIT EXTENDED TO THEIR PLANAR INTERSECTIONS WITH EACH OTHER AND WITH THE UPPER AND LOWER BOUNDARIES.

APERTURES. WHERE THERE ARE APERTURES IN ANY BOUNDARY, INCLUDING BUT NOT LIMITED TO, WINDOWS AND DOORS, THE BOUNDARIES OF THE UNIT EXTEND TO THE INTERIOR SURFACE OF ALL WINDOWS AND DOORS AND UNFINISHED EXTERIOR SURFACES OF EXTERIOR DOORS IN CORRIDORS. THE FRAMEWORK FOR WINDOWS AND EXTERIOR DOORS SHALL NOT BE INCLUDED IN THE BOUNDARIES OF THE UNIT.

## A Condominium



**T** **T**  
ASSOCIATES

Touloumis, Touloumis, & Associates  
100 Main Street, Suite 206  
Safety Harbor, FL. 34695

COMMERCIAL AND COMMON ELEMENT FLOOR PLAN - LEVEL 1



SCALE: 1/16" = 1'-0"



December 2, 2021

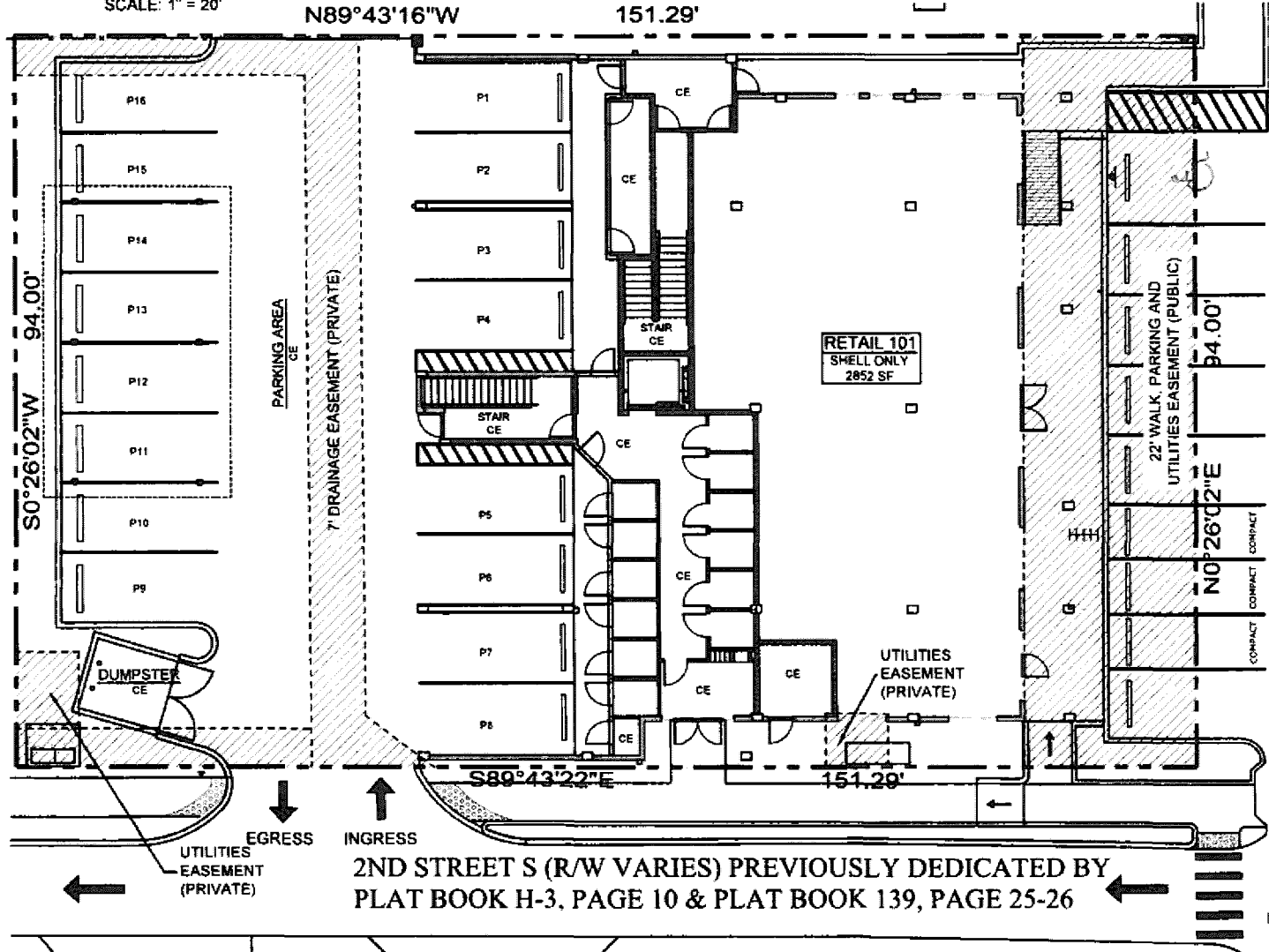
PLOT PLAN

# The Residences at Harbour Pointe West

## A Condominium



SCALE: 1" = 20'



Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL. 34695



2ND AVENUE S (40' R/W)  
 PREVIOUSLY DEDICATED BY  
 PLAT BOOK H-3, PAGE 10



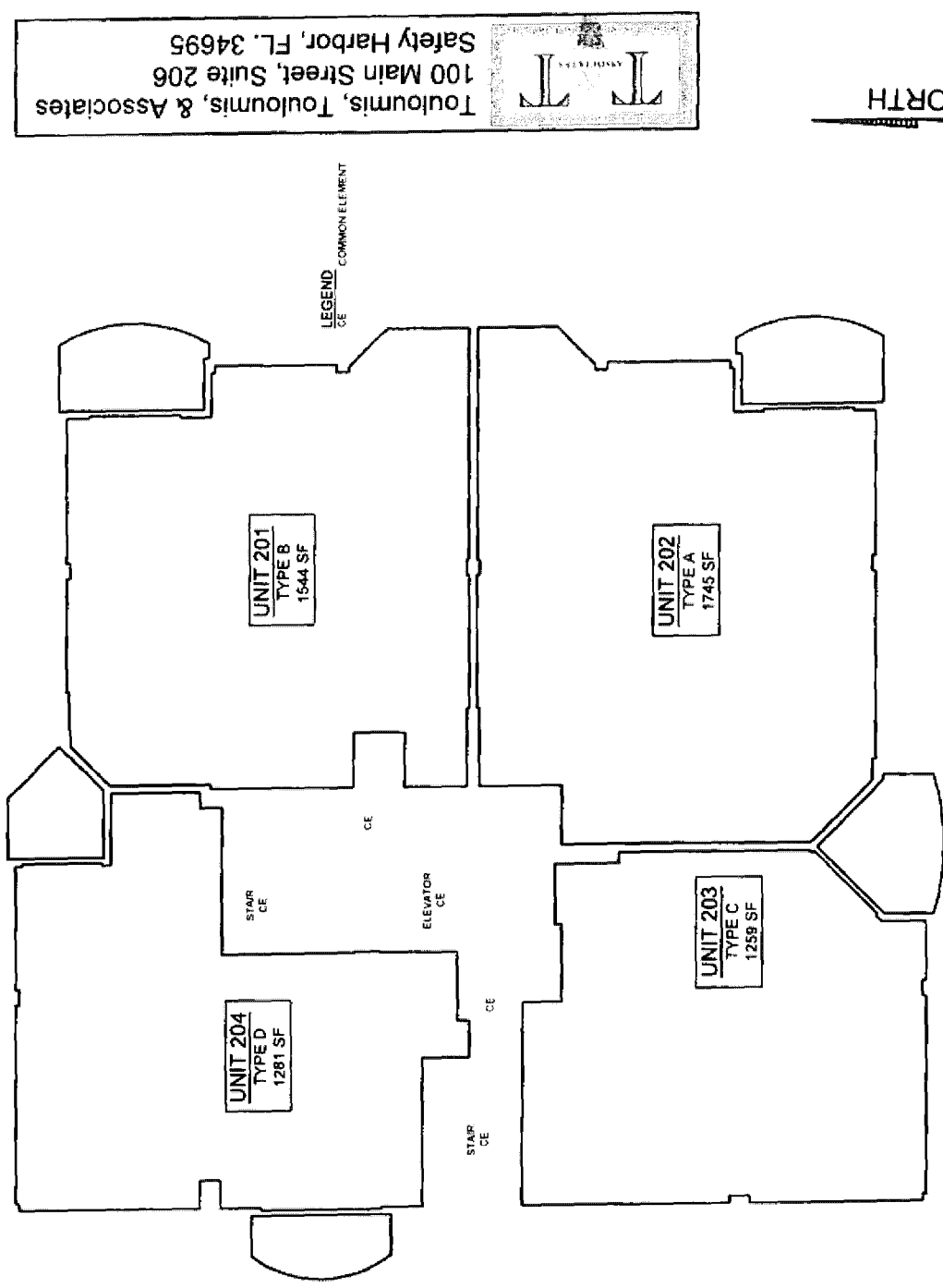
2ND STREET S (R/W VARIES) PREVIOUSLY DEDICATED BY  
 PLAT BOOK H-3, PAGE 10 & PLAT BOOK 139, PAGE 25-26

December 2, 2021


FLOOR PLANS

# The Residences at Harbour Pointe West

## A Condominium



Touounnis, Touounnis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL, 34695




December 2, 2021

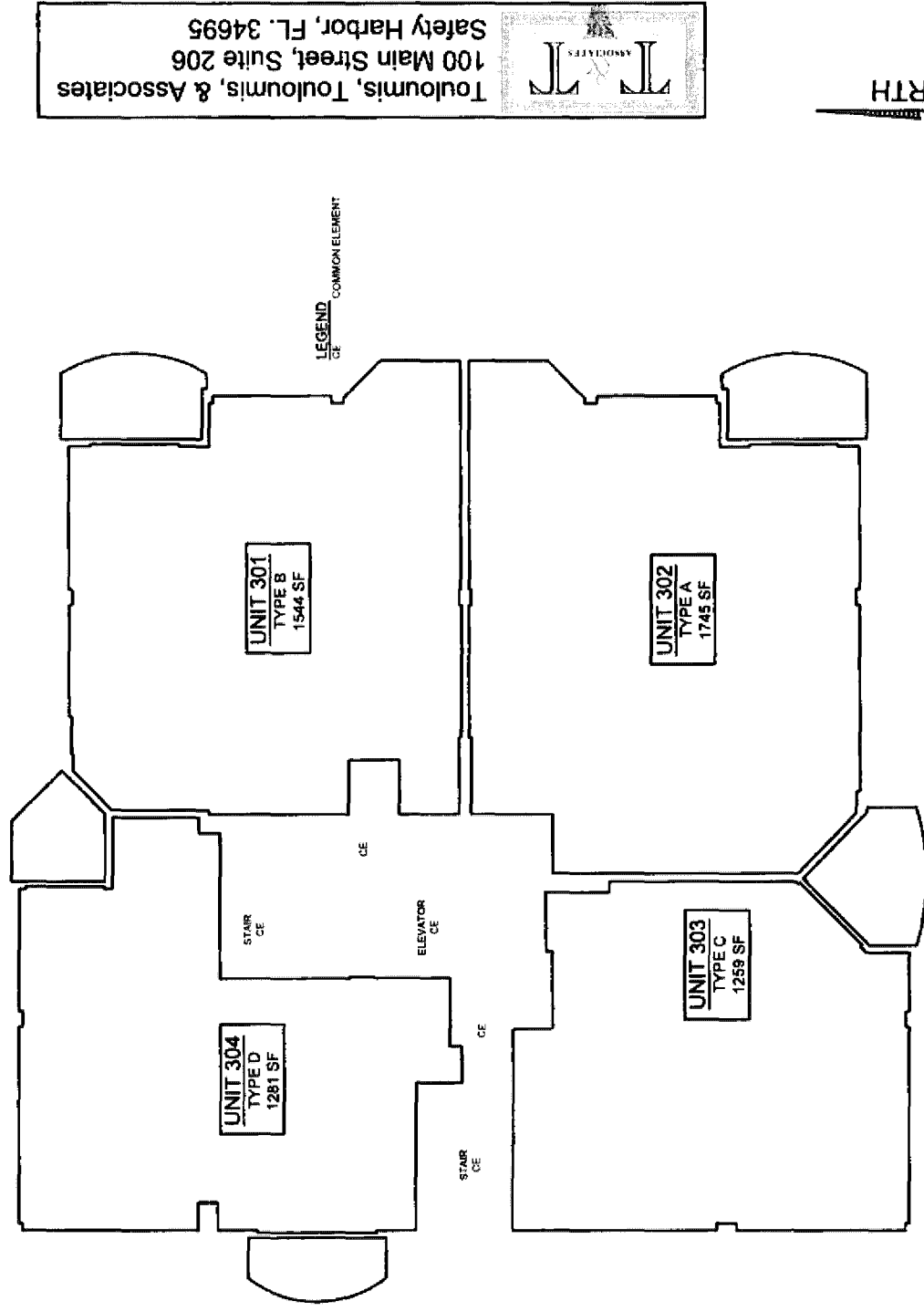
BUILDING PLAN - LEVEL 2






# The Residences at Harbour Pointe West

## A Condominium



Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL 34695



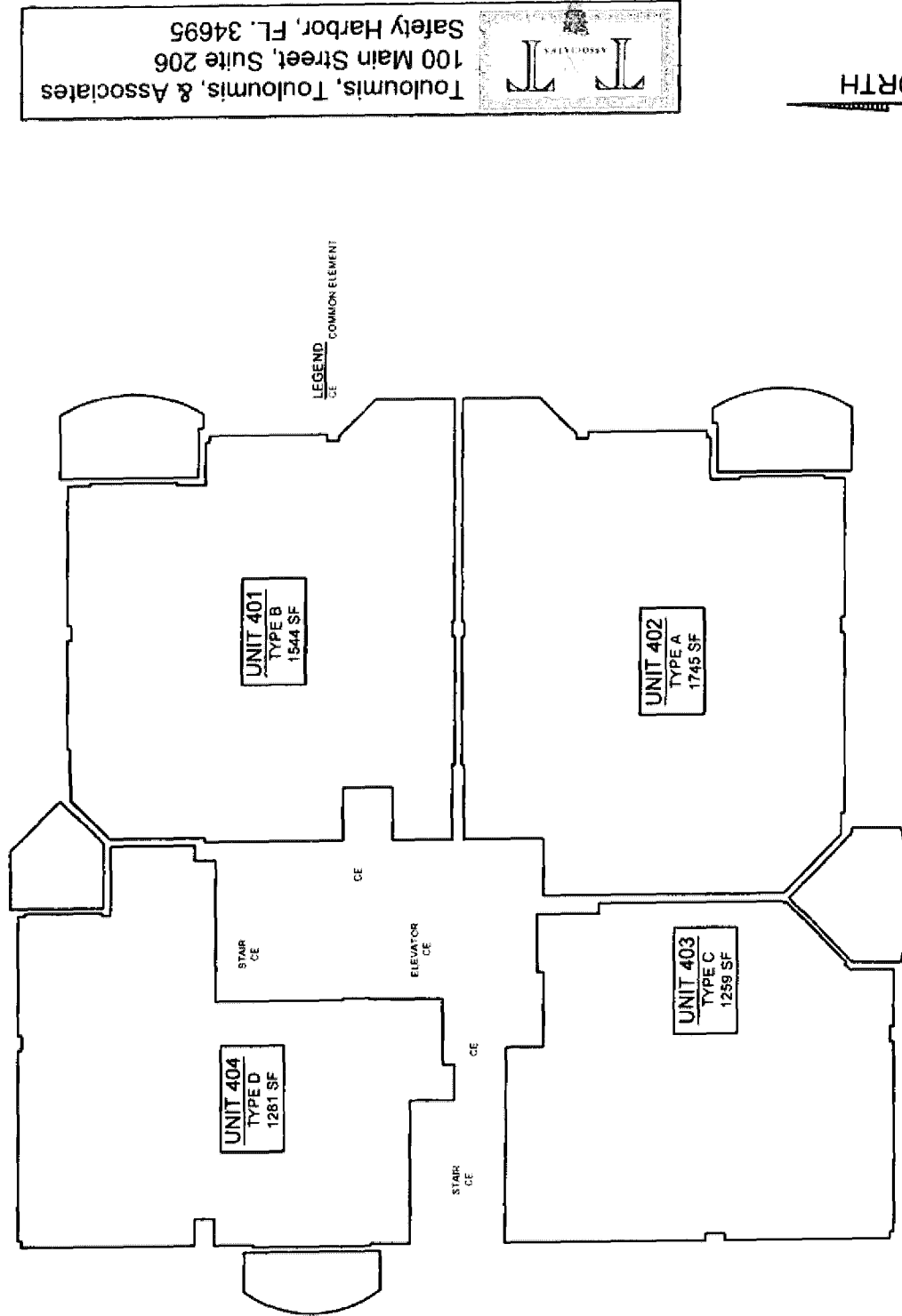

December 2, 2021

**BUILDING PLAN - LEVEL 3**




# The Residences at Harbour Pointe West

## A Condominium



Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL, 34695




December 2, 2021

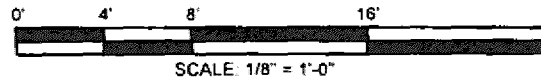
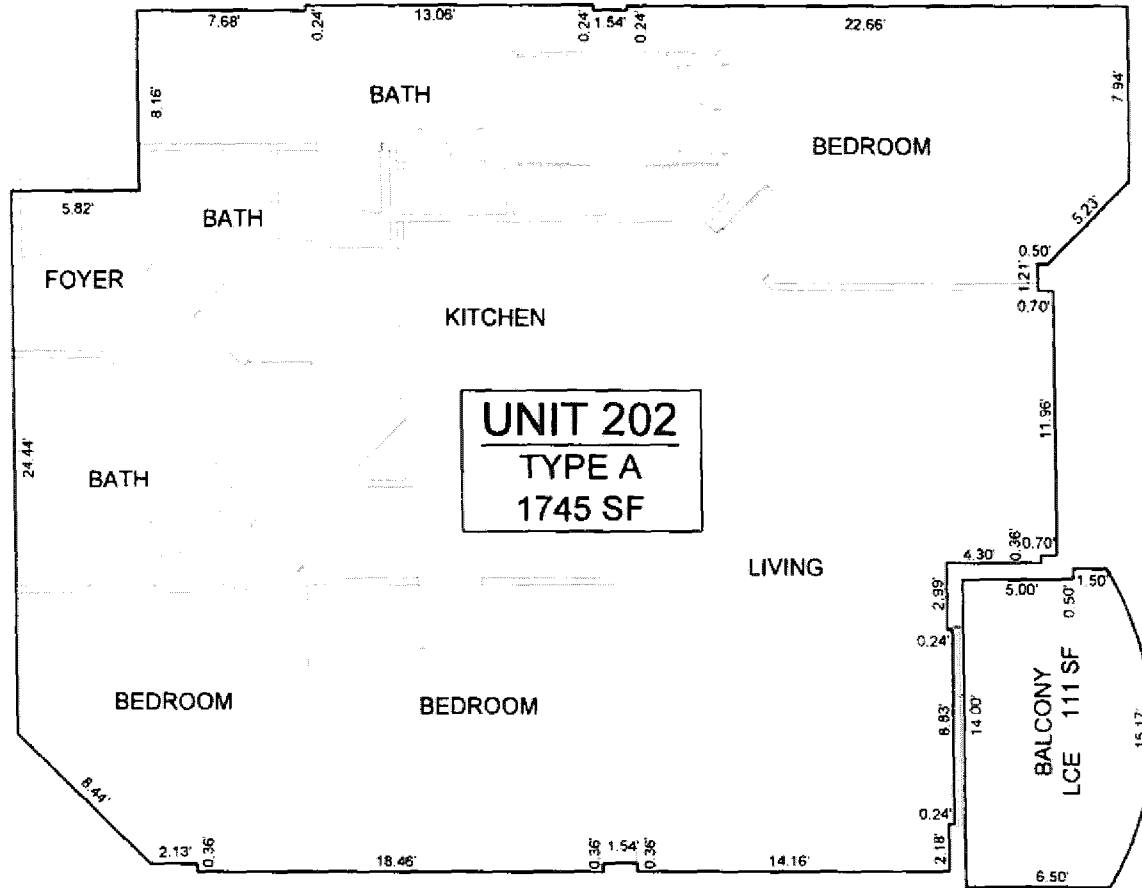
BUILDING PLANS - LEVEL 4





# The Residences at Harbour Pointe West

## A Proposed Condominium



### LEGEND

- CE COMMON ELEMENT
- LCE LIMITED COMMON ELEMENT
- BATH BATHROOM

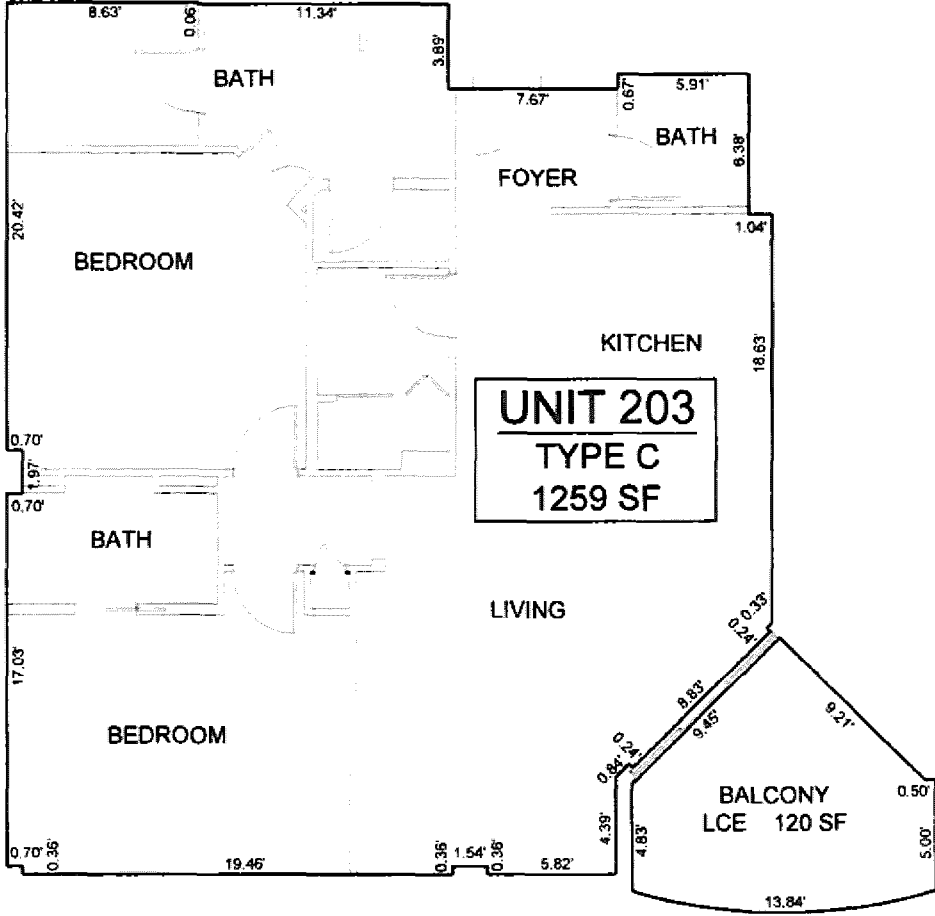
Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL. 34695




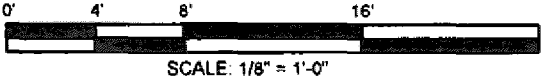
December 2, 2021

# The Residences at Harbour Pointe West

## A Proposed Condominium



Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL. 34695

**LEGEND**

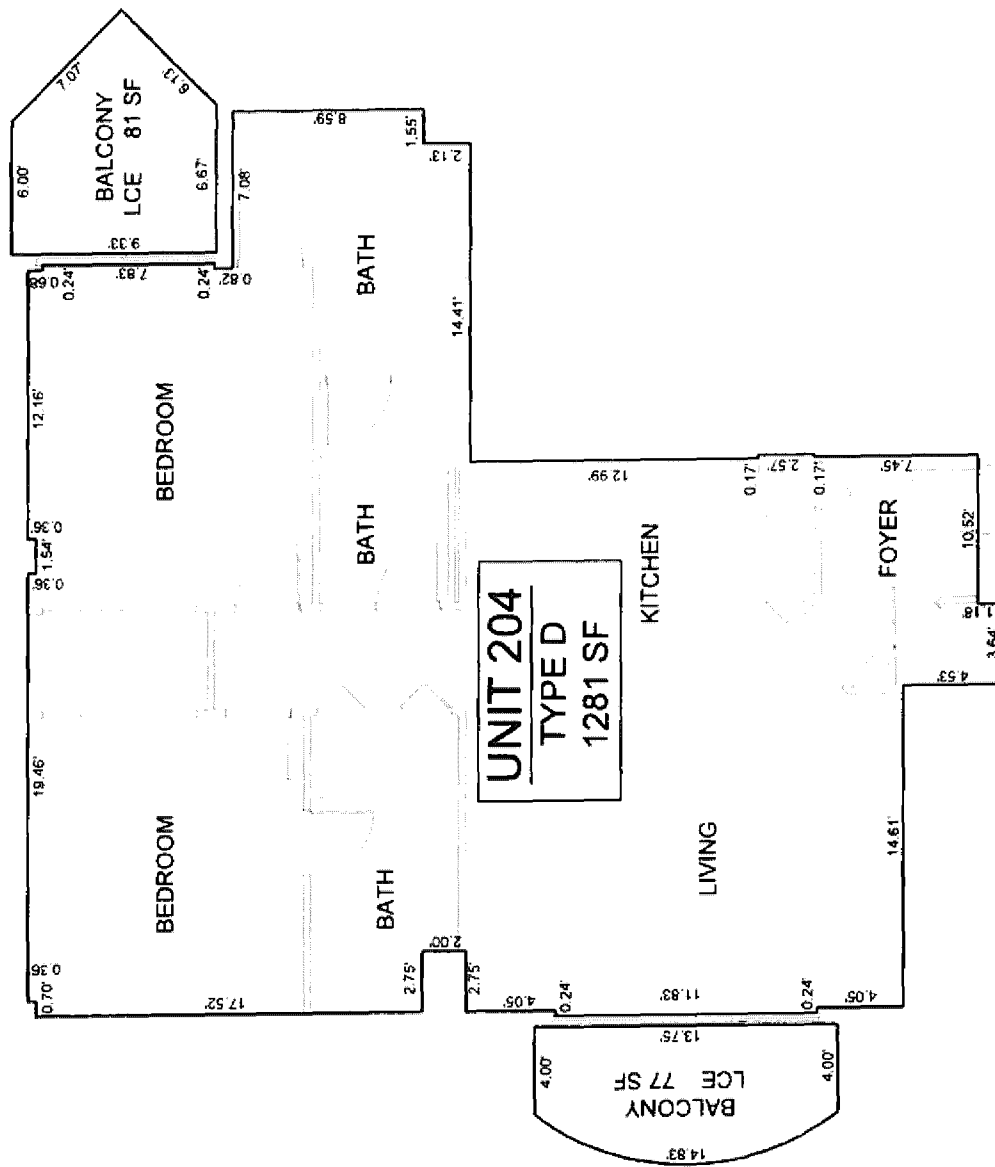
CE	COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
BATH	BATHROOM



December 2, 2021

# The Residences at Harbour Pointe West

## A Proposed Condominium



Touloumis, Touloumis, & Associates  
100 Main Street, Suite 206  
Safety Harbor, FL 34695



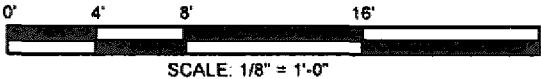
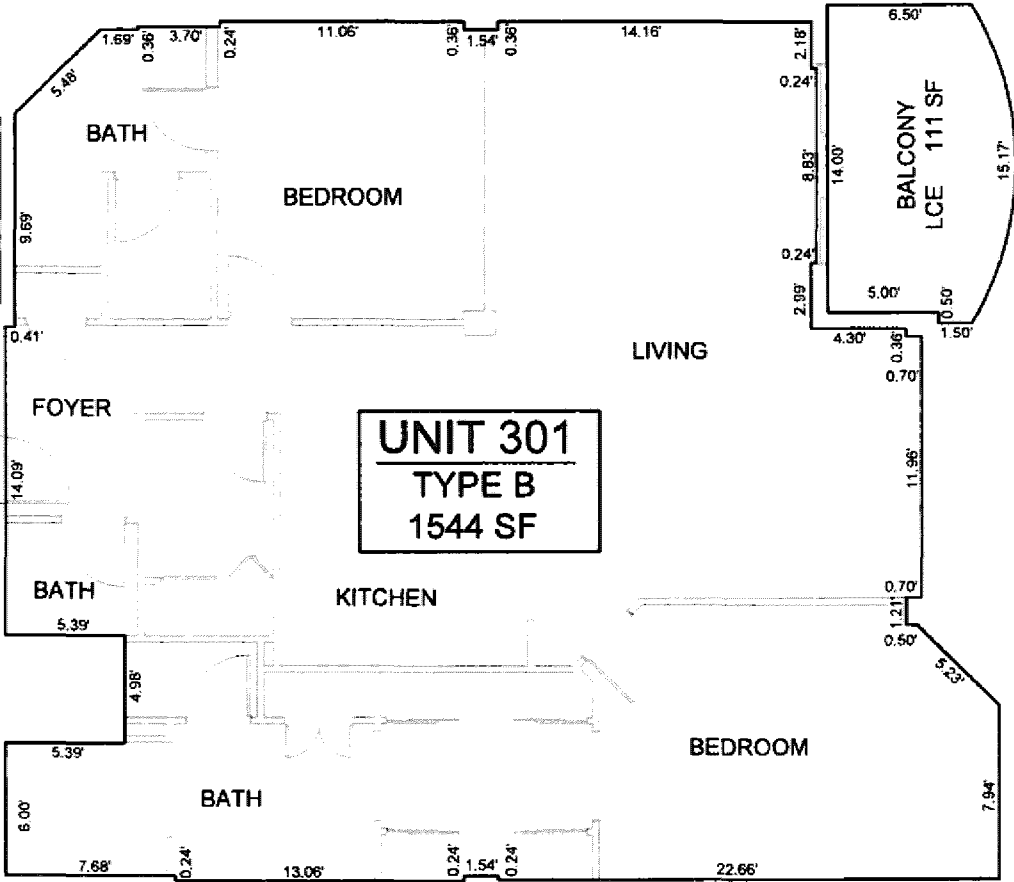
- LEGEND**
- CE COMMON ELEMENT
  - LCE LIMITED COMMON ELEMENT
  - BATH BATHROOM



December 2, 2021

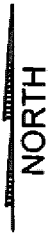
# The Residences at Harbour Pointe West

## A Proposed Condominium



**LEGEND**

CE	COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
BATH	BATHROOM

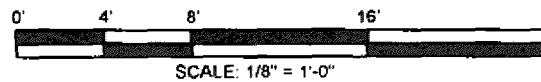
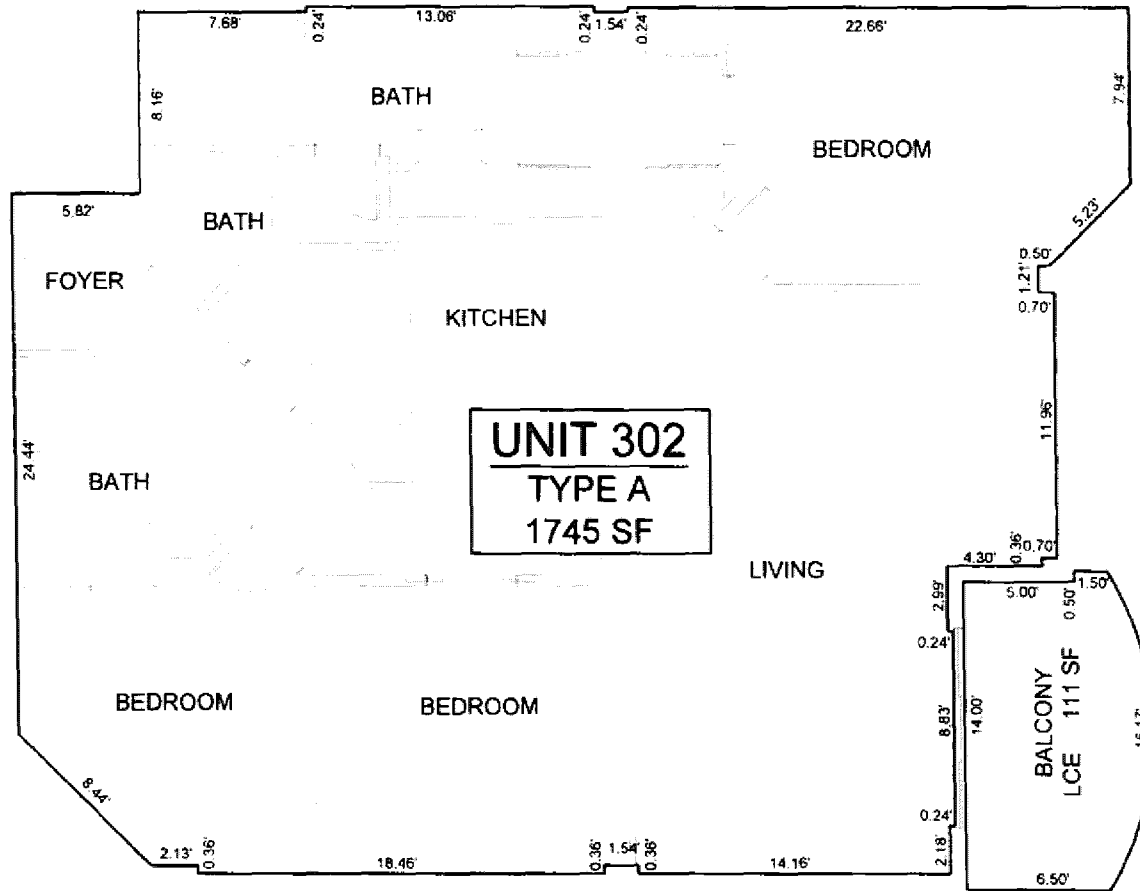


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Safety Harbor, FL. 34695

December 2, 2021

# The Residences at Harbour Pointe West

## A Condominium



### LEGEND

- CE COMMON ELEMENT
- LCE LIMITED COMMON ELEMENT
- BATH BATHROOM



**T&A**  
ASSOCIATES

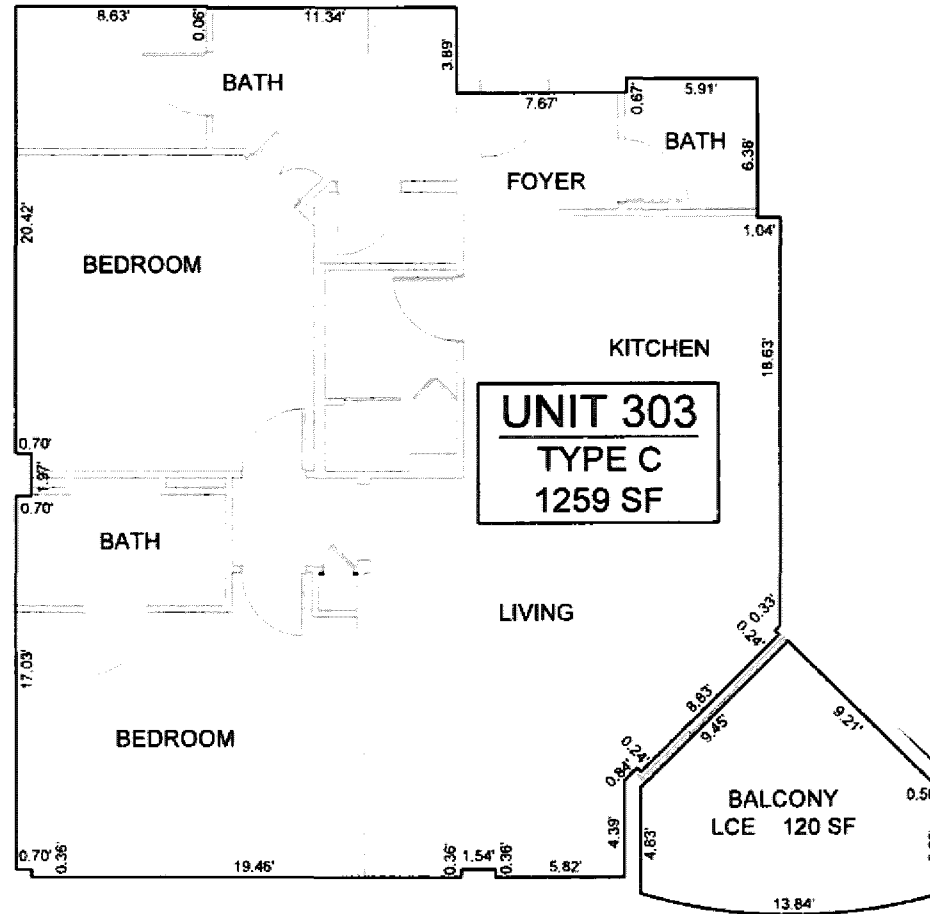
Touloumis, Touloumis, & Associates  
100 Main Street, Suite 206  
Safety Harbor, FL. 34695

December 2, 2021


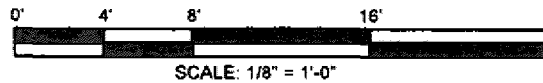


# The Residences at Harbour Pointe West

## A Proposed Condominium

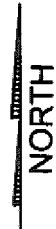


Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL 34695

**LEGEND**

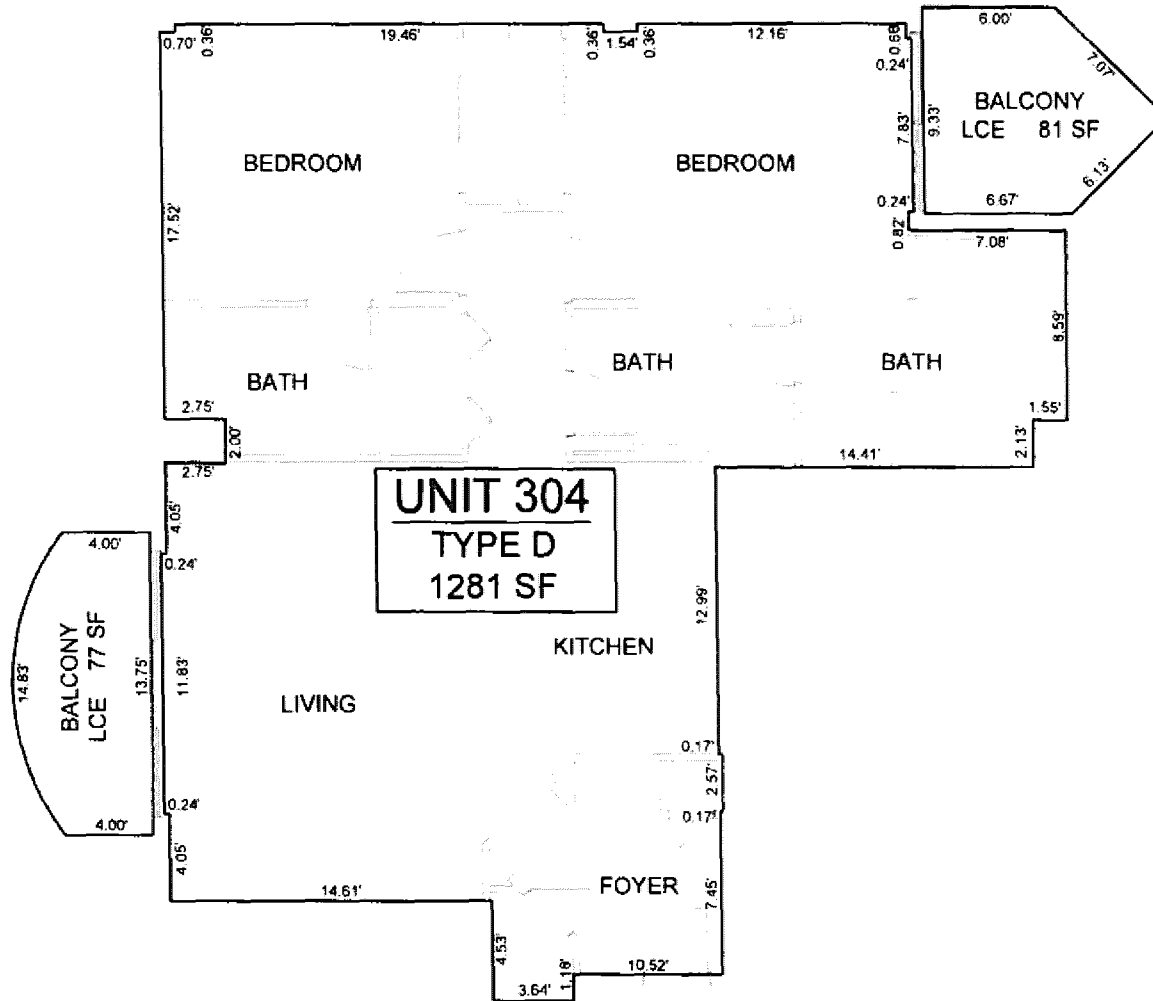
- CE COMMON ELEMENT
- LCE LIMITED COMMON ELEMENT
- BATH BATHROOM



December 2, 2021


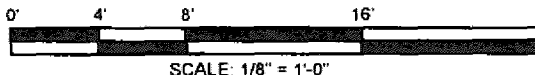
# The Residences at Harbour Pointe West

## A Proposed Condominium



**UNIT 304**  
**TYPE D**  
**1281 SF**

Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL 34695

**LEGEND**

CE	COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
BATH	BATHROOM

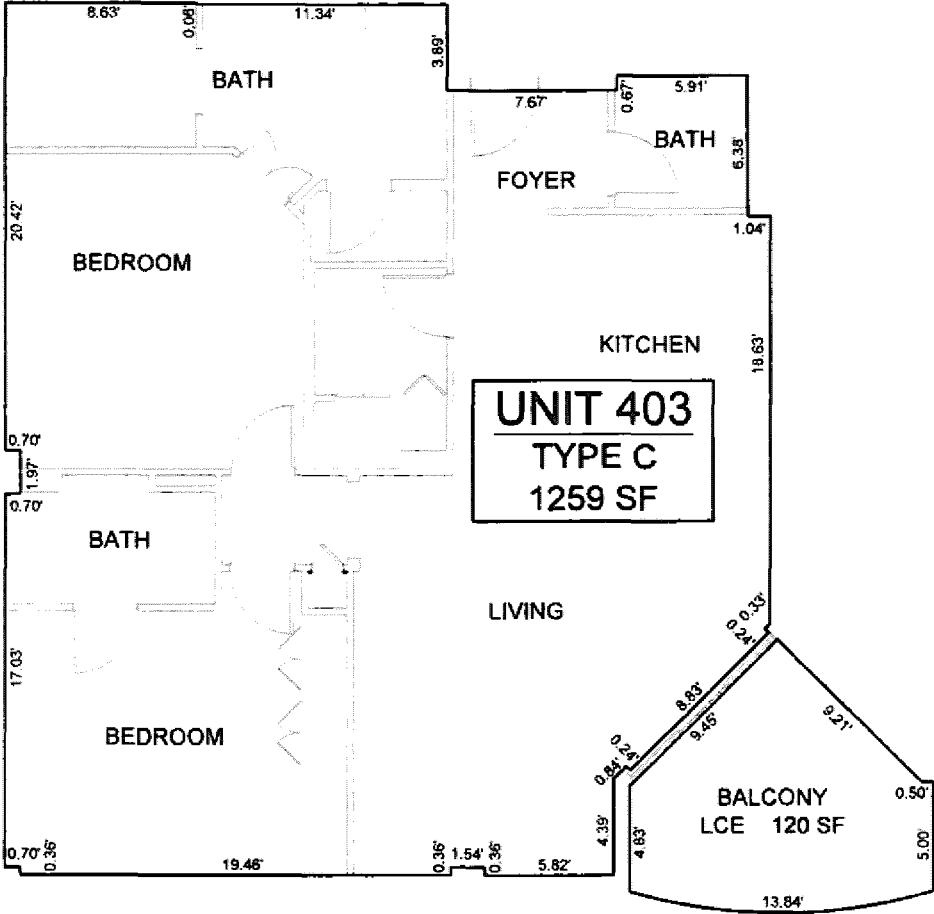
December 2, 2021



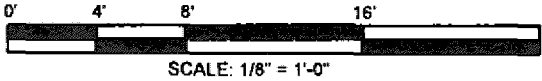


# The Residences at Harbour Pointe West

## A Proposed Condominium



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 100 Main Street, Suite 206  
 Safety Harbor, FL. 34695

**LEGEND**

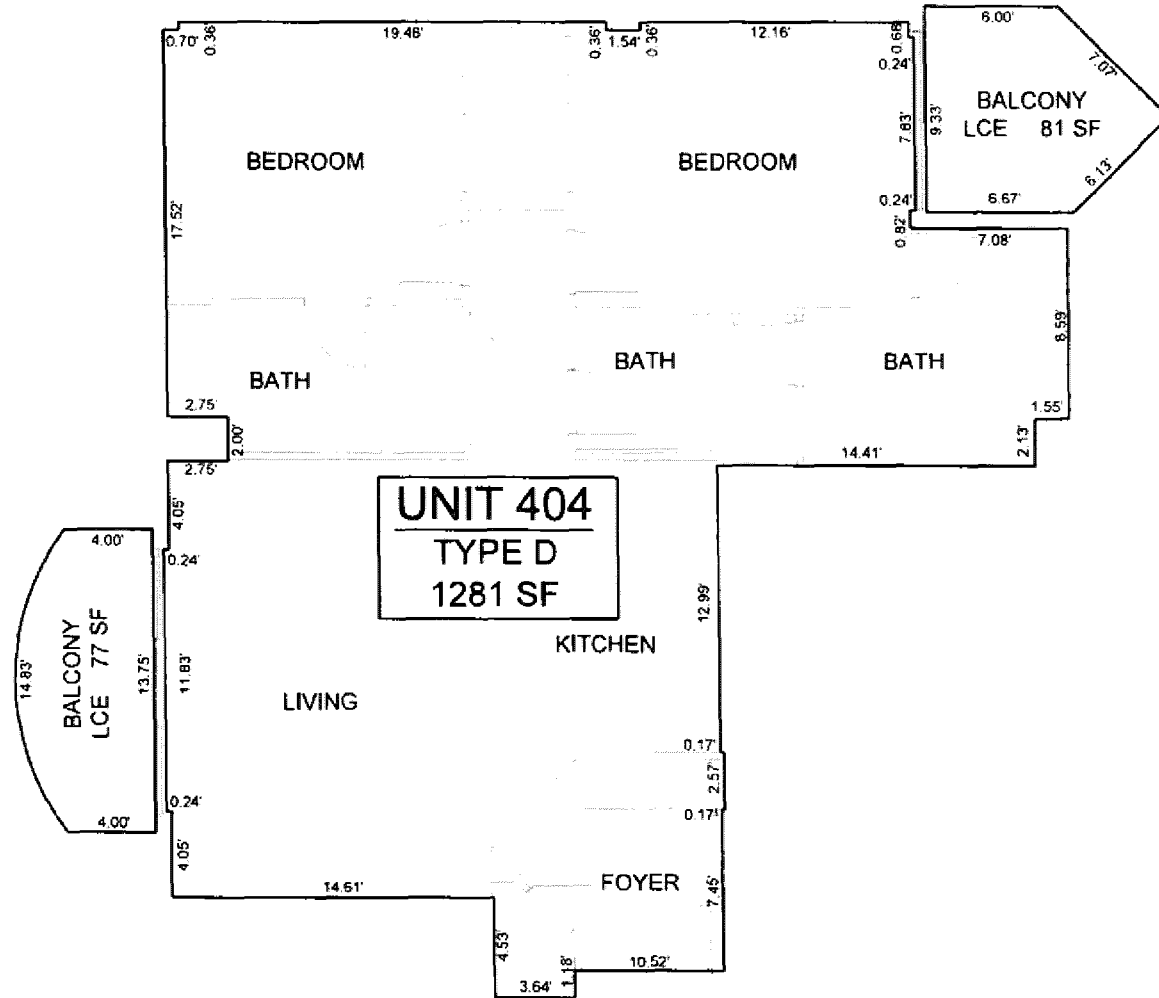
CE	COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
BATH	BATHROOM




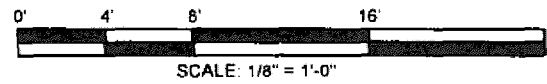
December 2, 2021

# The Residences at Harbour Pointe West

## A Proposed Condominium



Touloumis, Touloumis, & Associates  
 100 Main Street, Suite 206  
 Safety Harbor, FL 34695

**LEGEND**

CE	COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
BATH	BATHROOM

December 2, 2021

EXHIBIT D

**FIRST AMENDED AND RESTATED  
BYLAWS OF THE ASSOCIATION**

**THE  
RESIDENCES AT  
HARBOUR  
POINTE WEST  
CONDOMINIUM ASSOCIATION, INC.**

**SAFETY HARBOR, FLORIDA**

## BYLAWS

The Residences at Harbour Pointe West Condominium Association, Inc.

## ARTICLE I. IDENTIFICATION

1.1 Identity: These are the Bylaws of THE RESIDENCES AT HARBOUR POINTE WEST CONDOMINIUM ASSOCIATION, INC., a not-for-profit, corporation (the "Association") organized and existing under the laws of the State of Florida, hereinafter called the "Association", the Articles of Incorporation of which were filed in the office of the Secretary of State on September 23, 2020.

1.2 Purpose: The Association has been organized for the purpose of administering The Residences at Harbour Pointe West, a Condominium (the "Condominium"), created by the recording of the Declaration of Condominium in the Public Records of Pinellas County, Florida (the "Declaration") at Book 21195, Page 1027, in accordance with and pursuant to chapter 718, Florida Statutes, hereinafter called the "Condominium Act". The Condominium contains 12 Residential Units and 1 Commercial Unit, the record owners ("Owners" or "Unit Owners") of which shall be members of the Association. Unit Owners will become members upon receiving record title to a Unit.

1.3 Principal Office: The principal office of the Association shall be as provided in the Articles of Incorporation, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at the office of its manager located within the State of Florida.

1.4 Fiscal Year: The fiscal year of the Association shall be from January 1 through December 31 of each year.

1.5 Seal: The seal of the corporation shall bear the name of the corporation, the word "Florida", the words "corporation not-for-profit" and the year of incorporation.

1.6 Definitions: For convenience, these Bylaws shall be referred to as the "Bylaws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these Bylaws shall have the same definitions and meanings as those set forth in the Declaration, unless herein provided to the contrary or unless the context otherwise requires.

## ARTICLE II. MEMBERS

2.1 Qualification: The members of the Association shall consist of all of the record Owners of Condominium Units in The Residences at Harbour Pointe West.

2.2 Roster of Unit Owners: Each Unit Owner shall file with the



Association a copy of the deed or other document showing his or her ownership. The Association shall maintain such information and may rely upon the accuracy of the same for all purposes until notified in writing of changes therein as hereafter provided. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

2.3 Change of Membership: After receiving the approval of the Association if required in the Declaration, change of membership in the Association shall be established by recording in the Public Records of Pinellas County, Florida, a deed or other instrument establishing record title to a unit in the name of a Unit Owner or Owners, and by delivering to the Association a copy of such recorded instrument. The Owner designated by such instrument shall thereupon become a member of the Association and the membership of the prior Owner is thereby terminated

2.4 Designation of Voting Representative: If a Unit is owned by one person, his or her right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including spouses) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation or other entity, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate member of the entity and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit, if a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

2.5 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, such decision shall be expressed by the same person who would cast the vote of such Owner if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration or these Bylaws.

2.6 Restraint Upon Assignment of Shares and Assets: The share of a member in the funds and the assets of the Association cannot be assigned/hypothecated or transferred in any manner except as an appurtenance to his or her Unit.

### ARTICLE III. MEETINGS OF MEMBERS

3.1 Annual Meeting: The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of January following the year in which the Declaration is recorded.

3.2 Special Meetings: Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act.

3.3 Notice of Members Meetings: Notice of a meeting of members, stating the time and place and the purpose(s) for which the meeting is called, and including an agenda, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property at least fourteen (14) days before the meeting. The notice of the annual meeting shall be sent by mail, hand delivered or electronically transmitted to each Unit Owner in the manner provided in the Declaration, unless the Unit Owner waives in writing the right to receive notice of the annual meeting. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be affected not less than fourteen (14) days prior to the date of the meeting. The posting shall be for at least fourteen (14) continuous days. Proof of posting and mailing of the notice shall be given by affidavit of the person providing the notice or by a United States postal service certificate of mailing.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting, except when his or her (or his or her authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

Notice of meetings of the Board, Unit Owner meetings, except Unit Owner meetings to recall board members under Section 718.12(2)G) Florida Statutes, and committee meetings, may be given by electronic transmission to Unit Owners who consent to receive notice by electronic transmission.

An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association

meeting were mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the address last furnished to the Association. No other proof of notice of a meeting shall be required.

3.4 Quorum: A quorum at a members' meeting shall consist of the persons entitled to cast a majority of the votes of the entire membership of the Association, either present in person or by proxy. The acts approved by a majority of the voting interests represented at a meeting at which a quorum is present shall constitute the acts of the members, except when approval by a greater number of members is required by the Declaration, the Articles of Incorporation, or these Bylaws. Such votes may be by proxy, as hereinafter provided.

3.5 Voting:

- (a) Number of Votes. In any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of any Unit shall not be divisible. Notwithstanding the foregoing, the Owner of the Commercial Unit shall be entitled to two (2) votes.
- (b) Majority Vote. The acts approved by a majority of the voting interests represented at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these Bylaws. As used in these Bylaws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the votes entitled to be cast by the members and not a majority of the members themselves; that is, more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, unless specifically stated to the contrary, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.

3.6 Proxies: Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. No voting interest or consent right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, whether for a quorum, an election or otherwise. Limited proxies shall be permitted for votes taken to: waive or reduce reserves; for votes taken to waive the financial reporting requirements of Sections 718.111(13) Florida Statutes; for votes taken to amend the Declaration, Articles or Bylaws; or for any other matter requiring or permitting a vote of Unit Owners. General proxies may be used for other matters for which limited proxies are not required and may also be used in

voting for non-substantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. A proxy is not valid for a period longer than 90 days after the date of the first meeting for which it was given and may be revoked at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Developer). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted. Holders of proxies need not be Unit Owners. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot:

**WAIVING OF RESERVES IN WHOLE OR IN PART OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**

3.7 Adjournments: If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting.

3.8 Order of Business: If a quorum has been attained, the order of business at annual members' meetings and, as far practical, at all other members' meetings shall be:

- Ballots not yet cast shall be collected;
- Call to Order by President;
- Appointment by the President of a chairman of the meeting (who need not be a member, officer or a director);
- Calling of the roll and certifying of the proxies;
- Proof of notice of the meeting or waiver of notice;
- Reading and disposal of any unapproved minutes;
- Reports of officers;
- Reports of committees;
- Appointment of inspectors of election;
- Determination of number of Directors to be elected;

- Election of directors;
- Unfinished business;
- New business; and
- Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

3.9 Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Owner to speak on such items in its discretion. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. Any Unit Owner may record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:

The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;

- (a) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting;
- (b) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
- (c) At least 24 hours prior notice shall be given to the secretary of the Association by a Unit Owner desiring to make an audio or video tape of the meeting.

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

#### ARTICLE IV. DIRECTORS

4.1 Board of Directors: The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as provided herein, from time to time upon majority vote of the membership. Directors, other than designees of Developer, must be Unit Owners.

Directors may not vote at Board meetings by proxy.

4.2 Election of Directors: The election of Directors shall be conducted in the following manner:

(a) Election of Directors shall be held at the annual meeting of the members, or as needed to fill a vacancy. The Board may create or appoint a search committee which shall not have the authority to nominate any candidate.

(b) Not less than sixty (60) days before the annual meeting of the members, the Association shall mail or deliver to each Unit Owner entitled to vote, a first notice of the date of the election along with a certification form attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the Association and any applicable rules.

(c) Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Secretary of the Association not less than 40 days before a scheduled election. Written notice shall be effective when received by the Secretary or other person designated by the Secretary. A candidate information sheet if desired by the candidate, may be provided to the Association not less than 35 days before the election, along with the signed certification form referenced above. For purposes of this rule, written notice to the Secretary or other person designated by the Secretary shall be deemed adequate written notice on the Secretary. Written notice shall be accomplished in accordance with one or more of the following methods:

(i) By certified mail, return receipt requested, directed to the Secretary or other person designated by the Secretary; or

(ii) By personal delivery to the Secretary or other person designated by the Secretary; or

(iii) By regular U.S. mail, facsimile, telegram, or other method of delivery to the Secretary or other person designated by the Secretary.

(d) Upon receipt by the Secretary or other person designated by the Secretary of any written notice by personal delivery that a Unit Owner or other eligible person desires to be a candidate for the Board of Directors, the Secretary or other person designated by the Secretary shall issue a written receipt acknowledging delivery of the written notice.

(e) Upon request of a candidate, the Association shall, with the second notice of election, mail or personally deliver to all eligible voters at the address indicated in the official records a copy of an information sheet which may describe the candidate's background, education, and qualifications as well as other factors

deemed relevant by the candidate. The costs of mailing or delivery and copying shall be borne by the Association. The information contained therein shall not exceed one side of the sheet which shall be no larger than 8-1/2 inches by 11 inches. The failure of the Association to mail or personally deliver a copy of the timely delivered information sheet of each eligible candidate to the eligible voters shall render any election held null and void. The Association shall not edit, alter, or otherwise modify the content of the information sheet. The Association shall have no liability for the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

- (f) Together with the written notice and agenda for the member's meeting as provided in Section 3-3 above, the Association shall mail or deliver to the eligible voters at the address listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The Association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the Board of Directors that endorse, disapprove or otherwise comment on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the Unit or Unit number being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required shall be used for each ballot. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed, or hand delivered to the Association.

The written ballot shall indicate in alphabetical order by surname, each and every Unit Owner or other eligible person who desires to be a candidate for the Board of Directors and who gave written notice to the Association not less than 40 days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. The failure of the written ballot to indicate the name of each eligible candidate who gave written notice in the manner prescribed shall render any election so held null and void. No ballot shall indicate which candidate or candidates are incumbents on the Board. No ballot shall contain a section providing for the signature of a voter. All ballot forms utilized by the Association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance.

- (g) Envelopes containing ballots received by the Association shall be retained and collected by the Association and shall not be opened except in the manner and at the time provided herein:
- (i) Any envelopes containing ballots shall be collected by the Association and shall be transported to the location of the duly called meeting of the Unit

Owners. The Association at the meeting shall have available additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope as provided in subsection (g) above. Each envelope and ballot shall be handled in the following manner, either by the Board or by a person or persons appointed by the Board. At the meeting, as the first order of business, ballots not yet cast shall be collected. Next, the signature and Unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously verified as provided in paragraph (ii) below. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded", and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. At least twenty percent (20%) of the eligible voters must cast a ballot in order for there to be a valid election of members of the Board of Directors. Provided said number of ballots has been cast, then, in the presence of any Unit Owners in attendance, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened, and the ballots shall be removed and counted in the presence of the Unit Owners. Any inner envelope containing more than one ballot shall be marked "Disregard", and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not shall be retained with the official records of the Association.

- (j) If the Association desires to verify outer envelope information in advance of the meeting it may do so as provided herein. An impartial committee designated by the Board may, at a duly noticed meeting, which shall be open to all Unit Owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses: (1) current board members; (2) officers; and (3) candidates for the Board\*. At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded", and any ballots contained therein shall not be counted.
- (k) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the Board of Directors or other Unit Owner to assist in casting his vote. If the election is by voting machine, any such voter before retiring to the voting booth, may have a member of the Board of Directors or other unit Owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice.

At a minimum, all voting machines shall meet the following requirements:

Shall secure to the voter secrecy in the act of voting; Shall permit the voter to vote for as many persons and offices as he is lawfully



entitled to vote for, but no more; Shall correctly register or record, and accurately count all votes cast for any and all persons; Shall be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read ballots; and Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his or her actions while voting.

(l) There shall be no cumulative voting and no voting by proxy. When both the Developer and Unit Owners other than the Developer are entitled to representation on the Board, vacancies shall be filled in accordance with Rule 61B-23.0026, Florida Administrative Code. Vacancies in the Board of Directors occurring between annual meetings of the members shall be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedure must conform to the requirements of Article 4.2 of these Bylaws.

(m) Any member of the Board of Directors may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all of the voting interests. A special meeting of the Unit Owners to recall a member or members of the Board of Directors may be called by ten percent (10%) of the voting interests giving notice of the meeting as herein required for a meeting of Unit Owners, which notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided herein. The Board of Directors shall duly notice and hold a meeting within five (5) full business days of the adjournment of the Unit Owner meeting to recall one or more Board members. At the meeting the Board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession or shall proceed as set forth below if the Board elects not to certify the recall. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statutes and the Florida Rules of Civil Procedure and the Board of Directors shall call a meeting of the Board within five (5) full business days after receipt of the agreement in writing and at the meeting shall certify the written agreement to recall a member or members of the Board of Directors, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records of the Association in his or her possession. Notwithstanding the foregoing, if the Board determines not to certify the written agreement to recall a member or members of the

Board, or does not certify the recall by a vote at a meeting, the Board of Directors shall, within five (5) full business days after the meeting, file with the Division of Florida Condominiums, Timeshares, and Mobile Homes, a petition pursuant to the procedures of Section 718.1255, Florida Statutes. The Unit Owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall will be effective Upon mailing of the final order of arbitration to the Association. Any member or members so recalled shall deliver to the Board of Directors any and all records of the Association in his or her possession within five (5) full business days of the effective date of the recall.

(n) If the Board of Directors fails to duly notice and hold a board meeting within five (5) full business days of service of an agreement in writing or within five (5) full business days of the unit Owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the Board of Directors any and all records and property of the Association.

(o) If a vacancy occurs on the Board of Directors as a result of the recall or removal and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary contained in these Bylaws. If vacancies occur on the Board of Directors as a result of a recall and a majority or more of the members are removed, the vacancy shall be filled in accordance with procedural rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes.

(p) Notwithstanding the foregoing to the contrary, an election and balloting are not required (i) unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board or (ii) if there is only one candidate for election to fill the vacancy.

4.3 Term: Except as provided herein to the contrary, the term of each Director's service shall extend to the next annual meeting of the members and thereafter until his or her successors are duly elected and qualified or Until he or she is removed in the manner elsewhere provided. After such time as the Unit Owners, other than the Developer, have elected a majority of the Board of Directors, and upon approval of a majority of the total voting interests, the Association Board Members may serve 2-year staggered terms. Such resolution shall set forth the method by which the terms may be staggered and the procedures for electing directors to the term thus established.

4.4 Organizational Meeting. The organizational meeting of newly elected or appointed Directors shall be held within ten (10) days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and will generally be held immediately following the meeting at which they were elected. If not held at that time, the meeting will be rescheduled with notice of the meeting posted conspicuously on the Condominium Property 48 continuous hours preceding the meeting.

4.5 Regular Meeting: Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of the regular meeting shall be given to each Director, personally or by mail, telephone and shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours prior to the day named for such meeting.

4.6 Special Meetings: In accordance with FSA § 718.112(20)(c), if 20 percent of the voting interests petition the board to address an item of business, the board shall at its next regular board meeting, or at a special meeting of the board held not later than 60 days after receipt of the petition, place the item on the agenda. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted. If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

4.7 Waiver of Notice: Any Director may waive notice of a

meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

4.8 Quorum: A quorum at Director's meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the act of the Board of Directors; except where approval by a greater number of Directors is required by the Act, the Declaration, or these Bylaws.

4.9 Voting: Each Director shall have one (1) vote on all matters coming before the Board, a Director of the Association who is present at a meeting of its Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action because of an asserted conflict of interest. A Director of the Association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

4.10 Adjournment of Meeting If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called for may be transacted only after the rescheduled meeting has been noticed in accordance with Sections 4-5 and 4.6 above.

4.11 Joinder in Meeting by Approval of Minutes: The joinder of a Director in the action taken at a meeting, by signing and concurring in the minutes thereof, shall constitute the presence of such Director for the purpose of approving such minutes but not for the purposes of creating a quorum, nor may it be used as vote for or against the action taken.

4.12 Directors' Meeting: Meetings of the Board of Directors shall be open to all Unit Owners, and notices of such meeting which shall incorporate an identification of agenda items shall be posted conspicuously on the Condominium Property at least forty-eight continuous (48) hours in advance of such meeting, except in an emergency. If twenty percent (20%) of the voting interests petition the Board to address an item of business, the Board shall within sixty (60) days after receipt of the petition, shall place the item on the agenda at its next regular Board meeting or at a special meeting called for that purpose. Any item not included in the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Written notice of a meeting at which a non-emergency special assessment, or at which amendments to rules regarding Unit use will be considered, shall be mailed, hand delivered, or electronically transmitted to the Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with the fourteen (14) day notice shall be

made by an affidavit executed by the person providing the notice and filed among the official records of the Association. If there is no Condominium Property upon which notice can be posted, notices of Board meetings shall be mailed, hand delivered, or electronically transmitted to each Unit Owner at least fourteen (14) days prior to the meeting.

4.13 Presiding Officer: The presiding officer of the Directors\* meeting shall be the President. In the absence of the President, the Directors shall designate one of their number to preside.

4.14 Order of Business: The order of business of Directors' meetings shall be:

- (a) Roll call
- (b) Proof of due notice of meeting
- (c) Reading and disposal of any unapproved minutes
- (d) Reports of officers and committees
- (e) Election of officers, if any
- (f) Unfinished business
- (g) New business
- (h) Adjournment

Such order may be waived in whole or in part by direction of the presiding officer.

4.15 Members Right to Attend: Any meeting of the Board of Directors or its Committee (hereafter defined) at which a quorum is present is open to all Unit Owners. Any Unit Owner may tape record or video tape the meeting subject to rules if any, adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Unit Owner's right to speak at the meeting shall be subject to reasonable rules adopted by the Board of Directors in respect to the frequency, duration and manner of unit Owner statements.

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

4.17 Committees: The Board may by resolution create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable. As used herein, the term "Committee" shall, for purposes of notices of meetings and the rights of Unit Owners with respect to meetings, pertain to those committees meeting the definition thereof set forth in the Act; provided/ however, that this shall not prevent the Board of Directors from forming other Committees.

4.18 Proviso: Pursuant to Rule 61B-18.0012 FAC, any

document required to be delivered to a prospective purchaser which describes the Developer's right to retain control of the association, shall recite the following sections of FSA§ 718.301(1):

If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

- (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;
- (e) When the developer files a petition seeking protection in bankruptcy;
- (f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or
- (g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and

mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

#### ARTICLE V. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

5.1 Powers and Duties: All the powers and duties of the Association existing under the Act, Declaration, and these Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to the approval of the Unit Owners, when such is specifically required. Such powers and duties of the Board of Directors shall include, without limitation, (except as limited elsewhere herein), the following:

- (a) Operating and maintaining the Common Elements.
- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 9.2 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association in accordance with the Declaration.

(g) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.

(h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.

(i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.

(j) Obtaining and reviewing insurance for the Condominium Property.

(k) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.

(l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.

(m) Levying fines against appropriate Unit owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall exceed \$100.00 (or such greater amount as may be permitted by law from time to time) nor shall any fine be levied except after giving 14 days prior written notice and opportunity for a hearing before a committee of other Unit Owners to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine shall become a lien upon a Unit. If the committee does not agree with the fine, the fine may not be levied.

(n) Purchasing or leasing Units for use by resident superintendents and other similar persons.

(o) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the affirmative vote of the Owners of at least two-thirds (2/3rds) of all Units Shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor Shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit; provided always, however, the Association shall take no action authorized in this paragraph



without the prior written consent of Developer as long as Developer owns any Unit. Contracting for the management and maintenance of the Condominium Property and authorizing a management agent (who may be an affiliate of Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(p) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings (and imposing reasonable charges for such private use, but only if pursuant to a rental or use agreement of the applicable facility).

(q) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these Bylaws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.

(r) Imposing a lawful fee in connection with the approval of the lease or sublease of Residential Units or an assignment of a lease or sublease of a Residential Unit not to exceed the maximum amount permitted by law in any one case.

(s) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

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

(u) A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Board of Directors as evidence of compliance of the Condominium Units to the applicable fire and life safety codes.

5.2 Enforcement: The Board of Directors shall enforce by legal means, provisions of the Declaration, the Bylaws and Rules and Regulations for the use of the Condominium Property. In the event that the Board of Directors determines that any Unit Owner is in violation of any of the provisions of, the Declaration, the Bylaws, or Rules and Regulations, the Board, or any agent of the Board designated for that purpose, shall notify the Unit Owner of the nature of the violation. If said violation is not cured within five (5) days or if said violation consists of acts or conduct by the Unit Owner, and such other acts or conduct are repeated, the Board may levy a fine of a sum not exceeding \$100 per offense against the Unit Owner. Each day during which the violation continues shall be deemed a separate offense provided no fine shall in

the aggregate exceed \$1,000. The defaulting Unit Owner shall be entitled to a hearing before other Unit Owners who are neither Board members nor persons residing in a Board member's household, upon reasonable written notice of not less than 14 days, specifying the provision of the Declaration, Bylaws or Rules and Regulations which have been allegedly violated, the date, time and place of the hearing, and a statement of the matters asserted by the Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

5.3 Record of Mortgages on Units: The Board of Directors shall maintain a book or other written record, of all holders of mortgages upon each unit. The holder of each mortgage shall be designated as either an "institutional mortgagee" or not, as the case may be. Each Unit Owner must notify the Association of any mortgage on his or her Unit, and the name and address of the mortgagee, within five (5) days after entering into a mortgage on his Unit.

5.4 Response to Written Inquiry: Upon receipt by the Board of Directors of a written inquiry filed by a Unit Owner by certified mail, the Board of Directors shall respond in writing to the Unit Owner within thirty (30) days of receipt of the inquiry by either giving a substantive written response to the inquirer notifying the inquirer that a legal opinion has been requested, or notifying the inquirer that advice has been requested from the Division of Florida Condominiums, Timeshares, and Mobile Homes. If the Board of Directors requests advice from the Division of Florida Condominiums, Timeshares, and Mobile Homes, it shall, within ten (10) days of receipt of the advice, provide a written substantive response to the complainant. If a legal opinion is requested, the Board of Directors shall provide a written substantive response within sixty (60) days after the receipt of the inquiry. Failure to provide a substantive response as herein provided shall preclude the Board of Directors from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding or arbitration arising out of the complaint. The Board of Directors may adopt reasonable rules and regulations regarding the frequency and manner of responding to inquiries, including that the Association is only obligated to respond to one written inquiry per Unit in any given thirty (30) day period.

## ARTICLE VI. OFFICERS

6.1 Officers and Election: The executive officers of the Association shall be a President, who shall be a Director; a Vice President, Treasurer and Secretary and/or Assistant Secretary, all of whom shall be elected annually by the Board of Directors, and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary or the

Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time may elect such other officers and designate their powers and duties as the Board shall find necessary to properly manage the affairs of the Association. After Developer has relinquished control of the Board as provided in Section 4.18(b) above, all officers must be Unit Owners.

6.2 President: The President shall be the chief executive officer of the Association. He or she shall have all of the powers and duties which are usually vested in the office of President of an Association, including but not limited to the power to appoint committees from time to time, from among the members or others as he or she may in his or her discretion determine appropriate, and to assist in the conduct of the affairs of the Association. He or she shall serve as Chairman at all Board and Membership meetings,

6.3 Vice President: The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He or she shall also generally assist the President and exercise such other duties as are incident to the office of the vice president of an association and as may be required by the Directors or the President.

6.4 Secretary and Assistant Secretary: The Secretary shall keep the minutes of all proceedings of the Directors and the members. He or she shall attend to the giving and serving of all notices to the members and directors, and other notices required by law and the Condominium documents. He or she shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He or she shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association, as may be required by the Directors or the President. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent. The duties of the Secretary may be fulfilled by a manager employed by the Association.

6.5 Treasurer: The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He or she shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He or she shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

6.6 Compensation: Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by

such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties. This Section is subject at all times to the prohibitions set forth in the Act with respect to what are commonly referred to as "kickbacks".

6.7 Resignation: Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of Developer or officers who were not Unit Owners) shall constitute a written resignation of such Director or officer,

6.8 Indemnification of Directors and Officers: To the extent permitted by Chapter 617, Florida Statutes, every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, payable by the Unit Owners to meet the expenses of such Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount of reserves shall be computed by means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost of each reserve item. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect.

The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:

(i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed, hand delivered or electronically transmitted to the location furnished by the Unit Owner for that purpose not less than thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting.

(ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application often percent (10%) of the Unit Owners (i.e., 10% of the voting interests in the Association), received by the Board within twenty-one (21) days after adoption of the budget, a special meeting of the Unit Owners shall be held within sixty

(60) days after adoption of the budget. Each Unit Owner shall be given notice of said meeting at least fourteen

(14) days prior to such special meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than 50% of all the Units (including Units owned by Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

(iii) Determination of Budget Amount, in determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation Assessments for improvements to the Condominium property.

(iv) Proviso. As long as Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of a majority of all voting interests reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party or with which he or she may become involved by reason of being or having been a Director or officer at the time such expenses are or were incurred. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

6.9 Director or Officer Delinquencies: A Director or officer more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

6.10 Director and Officer Offenses: A Director or officer charged with a felony theft or embezzlement offense involving the Association's funds or Property shall be removed from office, creating a vacancy in the office to be filled according to law. While such Director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a Director or officer. However, should the charges be resolved without a finding of guilt, the Director or officer shall be reinstated for the remainder of his or her term of office, if any.

## ARTICLE VII. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

7.1 Accounts: Receipts and expenditures of the Association shall be credited and charged to accounts under the following classification\* as shall be appropriate.

(a) Current Expenses: Current expenses shall include all receipts and expenditures to be made within the year from which the receipts are budgeted and may include a reasonable allowance for contingencies and working funds, the balance in this fund at the end of each year shall be applied to reduce the assessment for current expenses for the succeeding year or to fund reserves.

(b) Reserves for Deferred Maintenance: Reserves for deferred maintenance shall include funds for maintenance items which occur less frequently than annually.

(c) Reserves for Replacement: Reserves for replacement shall include funds for repair or replacement required because of damage, depreciation or obsolescence

(d) Betterments: Reserves for betterments shall be used for capital expenditures for additional improvements or additional personal property that will become part of the Common Elements. Reserves for betterments shall be budgeted within the sole discretion of the Board of Directors.

7.2 Budget:

(a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts, estimated revenues and items of expense and contain at least all items set forth in Section 718.504(21), Florida Statutes, if applicable), determine the amount of Assessments

(b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of subsection 7.2(a) above the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

7.3 Assessments: Assessments against a Unit Owner for his or her share of the items of the budget shall be made in advance on or before December 20 preceding the year for which the Assessments are made. Such Assessment shall be due in twelve (12) equal monthly installments, one of which shall be due on the first day of each month of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment and monthly payments thereon shall

be due from the first day of each month until changed by an amended Assessment. In the event the annual Assessment proves to be insufficient, the budget and the Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 7.2 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month commencing the first day of the next ensuing month. If only a partial month remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

(5) Acceleration of Assessment installment upon Default: if a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate the Assessments installments upon thirty (30) days prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the Assessments for the balance of the budget year shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to the Unit Owner by certified mail, whichever shall first occur. No lien may be filed by the Association against a condominium Unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the Unit Owner by certified mail, return receipt requested, and by first-class United States mail to the Owner at his or her last known address as reflected in the records of the Association. However, if the address reflected in the records is outside the United States, then the notice must be sent by first-class United States mail to the Unit and to the last known address by regular mail with international postage, which shall be deemed sufficient. Delivery of the notice shall be deemed given upon mailing as required, the notice must be in substantially the form required by the Act.

7.4 Assessments for Emergencies: Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be made only after notice of the need for such is given to the Unit Owners. After such notice the Assessment shall become effective, and it shall be due after thirty (30) days' notice in such manner as the Board of Directors of the Association may require in the notice of Assessment.

7.5 Depository: The depository of the Association shall be in such bank or banks or other qualified financial institutions as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by appropriate resolution of the Board of Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund for investment purposes or divided into more than one fund for investment purposes, as determined by a majority of the Board of Directors.

7.6 Financial Reporting: The Association shall maintain accounting records in the State, according to uniform accounting principles and standards used by similar associations and in accordance with rules adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a report of cash receipts and disbursements, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within ninety (90) days after the end of the fiscal year, the Association shall prepare a complete set of reviewed financial statements in accordance with generally accepted accounting principles for the preceding fiscal year. Within twenty-one (21) days after the financial report is completed or received by the Association from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall mail, or furnish by personal delivery, to each Unit Owner a copy of the complete financial report a notice that a copy of the financial report will be mailed or hand delivered to the Unit Owner without charge Upon receipt of a written request from the Unit Owner. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- Cost for security;
- Professional and management fees and expenses;
- Taxes;
- Cost for recreation facilities;
- Expenses for refuse collection and Utility services;
- Expenses for lawn care;
- Cost for building maintenance and repair;
- Insurance costs;
- Administrative and salary expenses; and
- Reserves for capital expenditures, deferred maintenance and



any other category for which the Association maintains a reserve account or accounts.

Without a meeting of or approval by Unit Owners, the Association may prepare or cause to be prepared, audited financial statements. Prior to turnover of control from the Developer to the Association, all Unit Owners including the Developer may vote on issues related to the preparation of the Association's financial reports from the date of incorporation of the Association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to § 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all Unit Owners except the Developer may vote on such issues until control is turned over to the Association by the Developer. Any audit or review prepared under this Section shall be paid for by the Developer if done prior to turnover of control of the Association. The Association may not waive the financial reporting requirements of this Section for more than three (3) consecutive years.

7.7 Fidelity Bond: Fidelity bonds shall be required by the Board of Directors from all persons who control or disburse funds of the Association, including those authorized to sign checks and the President, Secretary and Treasurer of the Association. The amount of such bonds shall be determined by the Directors but in any event shall not be less than the maximum funds that will be in the custody of the Association or its management agent at any one time for each such person. The premiums on such bonds shall be paid by the Association. In the case of a person providing management services to the Association and required to be licensed pursuant to Section 468.431 Fla. Stat, the cost of bonding may be reimbursed by the Association, provided such person shall provide to the Association a certificate of insurance in the amount not less than the maximum funds that will be in the custody of the Association or its management agent at any one time.

7.8 Application of Payment: All payments made by a Unit Owner shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent Assessments.

7.9 Notice of Meetings: Notice of any meeting where Assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.

## ARTICLE VIII PARLIAMENTARY RULES

8.1 Parliamentary Rules: Roberts Rules of Order, the latest edition, shall govern the conduct of the meetings of the Association and the Board of Directors when not in conflict with the Declaration, Articles of Incorporation or these Bylaws.

## ARTICLE IX MISCELLANEOUS

9.1 Policy of Nondiscrimination. The Board of Directors of the Association is empowered to approve or disapprove of purchasers and lessees of Condominium Units and the Board shall make reasonable rules, regulations, and standards governing the approval or disapproval of purchasers or lessees which regulations and standards shall be designed to maintain a community of congenial residents of good character and with sufficient financial ability to timely pay the Assessments of the Association and taxes and other requirements for payments resulting from residence in the Condominium. However, no person shall be denied the right to purchase or lease a Unit because of race, religion, sex, national origin, marital status or handicap. Such standards, by which purchasers and lessees within the Condominium shall be qualified, shall be drafted by or under the direction of the first elected Board of Directors after the Developer relinquishes control of the Association.

9.2 Rules and Regulations: The Association shall have the authority to promulgate the "Rules and Regulations" concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted or modified which would prejudice the rights reserved to Developer without the prior written consent of Developer or which would apply to the Business Units or Limited Common Elements of the Business Units without the prior written consent of all Owners of Business Units.

9.3 Construction: Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

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

9.5 Official Records: From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:

- a. The plans, permits, warranties and other items provided by Developer pursuant to Section 718.301(4), Florida Statutes;
- b. A photocopy of the recorded Declaration of Condominium and all amendments thereto;
- c. A photocopy of the recorded Bylaws of the

Association and all amendments thereto;

- d. A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- e. A copy of the current Rules and Regulations of the Association;
- f. A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than 7 years;
- g. A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and numbers designated by Unit Owners for receiving notice by electronic transmissions of these Unit Owners consenting to receive notices by electronic transmission. The electronic mailing address and numbers provided by Unit Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmissions of notices;
- h. All current insurance policies of the Association and the Condominium;
- i. A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- j. Bills of sale or transfer for all property owned by the Association;
- k. Accounting records for the Association and the accounting records for the Condominium. All accounting records shall be maintained for a period of not less than 7 years. Any person who knowingly or intentionally defaces or destroys

accounting records required to be maintained, or intentionally fails to create or maintain accounting records required to be maintained, is personally subject to a civil penalty pursuant to Section 718.S01(1)(d). The accounting records shall include, but not be limited to:

- (i) Accurate, itemized, and detailed records for all receipts and expenditures.
  - (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
  - (iii) All audits, reviews, accounting statements, and financial reports of the Condominium.
  - (iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained by the Association.
- l. Ballots, sign-in sheets, voting proxies and all other papers relating to elections, which shall be maintained for a period of 1 year from the date of the meeting to which the documents relate, notwithstanding paragraph (b);
  - m. All rental records where the Association is acting as agent for the rental of Units;
  - n. A copy of the current Question and Answer sheet, in the form required by the Division of Florida Condominiums, Timeshares and Mobile Homes, which shall be updated annually;
  - o. AIE other records of the Association not specifically listed above but which are related to the operation of the Association; and
  - p. A copy of the inspection report as provided in

## Section 718.301(4)(p).

The official records of the Association shall be maintained in the State of Florida for at least 7 years. The records of the Association shall be made available to a Unit Owner within 45 miles of the Condominium Property or within Pinellas County within five (5) working days after receipt of written request by the Board or its designee. This paragraph may be complied with by having a copy of the official records of the Association available for inspection or copying on the Condominium Property or the Association may offer the option of making the records of the Association available to a Unit Owner either electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The official records of the Association are open to inspection by any Association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member. The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying.

The Association shall maintain an adequate number of copies of the Declaration, Articles of Incorporation and Bylaws and Rules, and all amendments to each of the foregoing, as well as the Question and Answer Sheet provided for in the Act and year-end financial information required by the Act on the condominium property to ensure their availability to Unit Owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. Notwithstanding the foregoing, the following records shall not be accessible to Unit Owners:

- (aa) Any record protected by the lawyer-client privilege as described in Section 90.502, F.S., and any record protected by the work product privilege including any record prepared at the attorneys' express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.
- (bb) Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a

- (cc) Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.
- (dd) Medical records of Unit Owners.
- (ee) Social Security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address/ and any address, email address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

(ff) Electronic security measures that are used by the association to safeguard data, including passwords.

(gg) The software and operating system used by the association which will allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

9.6 Approval by Unit Owners as to Certain Litigation.

The approval of a majority of all Unit Owners shall be required prior to the institution of any litigation by the Association other than litigation (i) to collect Assessments or enforce liens securing such Assessments, or (ii) to enforce occupancy and use restrictions set forth in this Declaration. In addition, the approval of a majority of all Unit Owners shall be required prior to the levy of a Special Assessment which in whole or in part is for the purpose of funding attorneys' fees and costs incurred in connection with any litigation that requires Unit Owner approval as above provided. This paragraph controls over any contract' provision of these Bylaws. The purpose of this paragraph is to discourage unnecessary litigation by the Association and to provide for concurrence by Unit Owners prior to commencement of certain litigation. This paragraph governs commencement of litigation only. Once commenced, litigation shall be under the sole control and authority of the Board of Directors.

9.7 Waiver of Jury Trial. All Unit Owners, the Association, the Developer and all other persons or entities that now or hereafter claim an interest in the Condominium Property hereby waive the right to a jury trial with regard to any litigation involving one or more of the aforesaid parties. It is the intent of this paragraph that any litigation, including without limitation, any litigation by the Association or Unit Owners against the Developer be tried by a judge without a jury in order to expedite such proceedings, to limit costs and expenses to be incurred, and to permit technical issues to be determined by the judge.

9.8 Alternative Dispute Resolution. If unresolved, disputes between the Board of Directors and Unit Owners, shall be resolved in accordance with FSA § 718.1255.

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

## ARTICLE X. HURRICANE PROTECTION

10.1 Hurricane protection using impact glass and rated windows and exterior doors which complies with or exceeds the current applicable building code has been installed in the Condominium. The Board of Directors may not install hurricane shutters or other additional hurricane

protection. The responsibility for the maintenance, repair, and replacement of the hurricane protection (code compliant windows and doors) shall be the responsibility of the Unit Owners.

#### ARTICLE XI. FREQUENTLY ASKED QUESTIONS AND ANSWERS

11.1 The Board of Directors shall prepare a question and answer sheet in compliance with Section 718.504, Florida Statutes and shall update the same annually.

#### ARTICLE XII. AMENDMENT

12. Amendments. Except as in the Declaration provided otherwise, these Bylaws may be amended in the following manner:

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

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

(a) by not less than 75% of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than 75% of the entire Board of Directors; or

(b) after control of the Association has been turned over to Unit Owners other than Developer, by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained.

12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.

12.4 Notwithstanding anything herein to the contrary, Developer may amend these Bylaws, without notice, at any time prior to the sale or transfer of the first Unit to a Unit Owner.

12.5 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment to these Bylaws, which certificate shall be



executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.

The foregoing was adopted as the Bylaws of THE RESIDENCES AT HARBOUR POINTE WEST CONDOMINIUM ASSOCIATION, INC., a corporation not-for-profit under the laws of the state of Florida at the first meeting of the Board of Director on the 7<sup>th</sup> day of February, 2022

THE RESIDENCES AT HARBOUR POINTE WEST  
CONDOMINIUM ASSOCIATION, INC

By 

WILLIAM E. TOULOUMIS

  
Witness