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NAPLES FL 34103

## **CERTIFICATE OF RECORDATION**

### **COMBINED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

#### **BEACON HOUSE TOWER ONE, A CONDOMINIUM AND**

#### **BEACON HOUSE TOWER TWO, A CONDOMINIUM**

#### **AMENDED AND RESTATED ARTICLES OF INCORPORATION AMENDED AND RESTATED BY-LAWS**

#### **B.H.C., INC., A CONDOMINIUM CORPORATION**

I HEREBY CERTIFY that the attached Combined Amended and Restated Condominium Documents were duly adopted by the Association membership at the duly noticed annual members' meeting of the Association on the 20th day of March, 2002. The original Declaration of Condominium for Beacon House Tower One, a Condominium, is recorded at O.R. Book 184, at Pages 258 et seq., Public Records of Collier County, Florida; the original Declaration of Condominium for Beacon House Tower Two, a Condominium, is recorded at O.R. Book 230, Pages 1 et seq., Public Records of Collier County, Florida.

The Combined Amended and Restated Declaration of Condominium of Beacon House Tower One, a Condominium, and Beacon House Tower Two, a Condominium, is attached hereto. The Amended and Restated Articles of Incorporation of B.H.C., Inc. are also attached. The Amended and Restated By-Laws of B.H.C., Inc. are also attached. All previous site plans of record are incorporated by reference, with photocopies recorded for reference. The Rules and Regulations of the Association are not herewith recorded. The Rules and Regulations may also be further amended without recordation of said changes in the public records. The current version of the Rules and Regulations are available from the Association for interested parties.

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TELEPHONE (239) 261-9555

WITNESSES:  
(TWO)

B.H.C., INC.

[Signature]  
Signature  
Dennis Goodman  
Printed Name

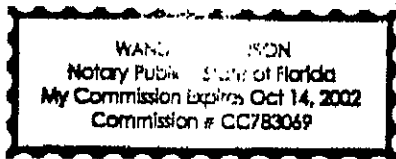
BY: [Signature]  
Peter Scianna, President  
Date: 3/28/02

[Signature]  
Signature  
Wanda B Knudson  
Printed Name

(CORPORATE SEAL)

STATE OF FLORIDA )  
COUNTY OF COLLIER ) SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of March, 2002, by Peter Scianna as President of B.H.C., Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me ~~or has produced (type of identification)~~ as identification and did take an oath.



[Signature]  
Notary Public  
Wanda B Knudson  
Printed Name

My commission expires: 10-14-02

23381\_1.DOCnap

**COMBINED AMENDED AND RESTATED**

**DECLARATION OF CONDOMINIUM**

**OF**

**BEACON HOUSE TOWER ONE, A CONDOMINIUM AND  
BEACON HOUSE TOWER TWO, A CONDOMINIUM**

**SUBSTANTIAL REWORDING OF ENABLING DECLARATIONS OF COVENANTS,  
RESTRICTIONS, LIMITATIONS, CONDITIONS AND USES CREATING AND  
ESTABLISHING A PLAN-**

**SEE CURRENT DECLARATION OF CONDOMINIUM FOR CURRENT TEXT**

WHEREAS, a fifty-two (52) unit condominium complex initially described as two (2) separate condominiums, was formed by the recording of two separate Declarations of Covenants, Restrictions, Limitations, Conditions, and Uses as follows:

BEACON HOUSE, TOWER ONE, a Condominium, by Declaration recorded February 17, 1965, at O.R. Book 184, Pages 258 et seq., Public Records of Collier County, Florida, consisting of 24 units:

BEACON HOUSE, TOWER TWO, a Condominium, by Declaration recorded January 20, 1967, at O.R. Book 230, Pages 1 et seq., Public Records of Collier County, Florida, consisting of 28 units.

The Declarations of Covenants, Restrictions, Limitations, Conditions, and Uses of those two condominiums were amended to reflect the two condominiums as a "single condominium property" by the recording an amendment to the Declaration of Covenants, Restrictions, Limitations, Conditions and Uses on June 1, 1977 at O.R. Book 691, Pages 112 et seq. of the Collier County Public Records. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby adopt certain amendments to the aforementioned Declaration of Covenants, Restrictions, Limitations, Conditions, and Uses and, except as noted, hereby restate said Declaration of Covenants, Restrictions, Limitations, Conditions, and Uses and its Exhibits in their entirety, by this document, which shall be known as the Combined, Amended and Restated Declaration of Condominium, or Amended and Restated Declaration of Condominium, or Declaration of Condominium.

Submission of the lands to the condominium form of ownership by those documents and easements therein or otherwise created remain effective as do the legal descriptions, condominium plot plans and amendments thereto. Said plot plans are attached as Exhibit "A" hereto, for reference sake. Except as to the provisions noted, this Declaration supersedes and replaces the originals.

**Amended and Restated Declaration of Condominium  
(Page 1 of 39)**

**RECITALS:**

WHEREAS, for Beacon House, Tower One, in a Declaration of Covenants, Restrictions, Limitations, Conditions and Uses recorded at O.R. Book 184, Pages 258 et seq. of the Collier County Public Records on February 17, 1965, the Condominium Developer did submit to condominium ownership pursuant to Chapter 711, Florida Statutes, known as the Condominium Act, that property situated in Collier County, Florida, more particularly described as follows:

Commencing at the Northwest corner of Lot 14, Block "S", The Moorings, Unit No. 2, as recorded in Plat Book 3, pages 83 and 84 of the Public Records of Collier County, Florida:

Thence along the Northerly line of said Lot 14, N 57° 36' 05" E 199.82 feet for a PLACE OF BEGINNING; Thence continuing along the last described course, N 57° 36' 05" E 193.30 feet; Thence S 32° 22' 55" E 184.79 feet; Thence S 55° 57' 05" W 192.30 feet; Thence N 32° 43' 25" W 190.31 feet to the Place of Beginning.

Also an easement for purposes of ingress and egress over and across the following described property:

BEGINNING at the Northwest corner of Lot 14, Block "S", The Moorings, Unit No. 2, as recorded in Plat Book 3, pages 83 and 84 of the Public Records of Collier County, Florida:

Thence along the Northerly line of said Lot 14, N 57° 36' 05" E 199.82 feet; Thence S 32° 43' 25" E 20.00 feet; Thence S 57° 36' 05" W 206.12 feet to the Easterly line of Gulf Shore Blvd.; Thence along said easterly line of 20.96 feet along the arc of a circular curve concave to the East, radius 390.0 feet, chord bearing N 15° 13' 22" W 20.95 feet to the Place of Beginning;

All being part of said Lot 14, Block "S", the Moorings, Unit No. 2.; and

WHEREAS, for Beacon House, Tower Two, in a Declaration of Covenants, Restrictions, Limitations, Conditions and Uses recorded at O.R. Book 230, Pages 1 et seq. of the Collier County Public Records on January 20, 1967, the Condominium Developer did submit to condominium ownership pursuant to Chapter 711, Florida Statutes, known as the Condominium Act, that property situated in Collier County, Florida, more particularly described as follows:

BEGINNING at the Northwest corner of Lot 14, Block "S", The Moorings, Unit No. 2, as recorded in Plat Book 3, pages 83 and 84 of the Public Records of Collier County, Florida; Thence along the Northerly line of said Lot 14, N 57° 36' 05" E 199.82 feet; Thence S 32° 43' 25" E 172.00 feet; Thence S 57° 36' 05" W 102.30 feet; Thence S 8° 48' 05" W 46.75 feet; Thence S 57° 36'

Amended and Restated Declaration of Condominium  
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05" W 79.59 feet to the Easterly line of Gulf Shore Blvd; Thence along said Easterly line 210.04 feet along the arc of a circular curve concave to the East, radius 390.00 feet, chord bearing N 29° 06' 53" W 207.51 feet to the place of BEGINNING.

Subject to an easement for purposes of ingress and egress over and across the following described property; BEGINNING at the Northwest corner of Lot 14, Block "S", the Moorings Unit No. 2, as recorded in Plat Book 3, pages 83 and 84, of the Public Records of Collier County, Florida; Thence along the Northerly line of said Lot 14, N57° 36' 05" E 199.82 feet; thence S 32° 43' 25" E 20.00 feet; Thence S 57° 36' 05" W 206.12 feet to the Easterly line of Gulf Shore Blvd; Thence along said Easterly line of 20.96 feet along the arc of a circular curve concave to the East, radius 390.00 feet, chord bearing N 15° 13' 22" W 20.95 feet to the Place of BEGINNING.

All being part of said Lot 14, Block "S", The Moorings, Unit No. 2; and

WHEREAS, said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 232, Page 838, Collier County Public Records, relevant to Beacon House Tower One, a Condominium only.

Amendment recorded at O.R. Book 643, Page 0870, Collier County Public Records, relevant to Beacon House Tower One and Beacon House Tower Two.

Amendment recorded at O.R. Book 691, Page 104, Collier County Public Records, relevant to Beacon House Tower One and Beacon House Tower Two.

Amendment recorded at O.R. Book 691, Page 112, Collier County Public Records, relevant to Beacon House Tower One and Beacon House Tower Two.

Amendment recorded at O.R. Book 2034, Page 0949, Collier County Public Records, relevant to Beacon House Tower One and Beacon House Tower Two.

Amendment recorded at O.R. Book 2157, Page 1718, Collier County Public Records, relevant to Beacon House Tower One only.

Amendment recorded at O.R. Book 2157, Page 1719, Collier County Public Records, relevant to Beacon House Tower Two only.

Amendment recorded at O.R. Book 2310, Page 1196, Collier County Public Records, relevant to Beacon House Tower One and Beacon House Tower Two.

Amended and Restated Declaration of Condominium  
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The Condominium Property for Beacon House Tower One. A Condominium is further described at Condominium Plat Book 1, Pages 18 - 22, Collier County Public Records.

The Condominium Property for Beacon House Tower Two. A Condominium is further described at Condominium Plat Book 1, Pages 48 - 55, Collier County Public Records.

NOW THEREFORE, the submission of the land to the condominium form of ownership by those document(s), as amended, is and will remain effective. It is the desire of the unit owners, however, to operate with modernized documents free of internal conflicts, obsolete references to the Developer, and in accordance with modern condominium governance practices. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby adopt certain amendments to the aforementioned Declaration of Covenants, Restrictions, Limitations, Conditions and Uses Creating and Establishing a Plan and hereby restates the Declaration of Covenants, Restrictions, Limitations, Conditions and Uses Creating and Establishing a Plan and their Exhibits in their entirety. By adoption of this Amended and Restated Declaration of Condominium, the members of the Association further ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of Chapter 718, Florida Statutes (2000), as amended from time to time. The original Enabling Declarations of Covenants, Restrictions, Limitations, Conditions, and Uses Creating and Establishing a Plan, as amended heretofore, hereby, and hereafter shall remain in effect for the purpose of legally describing the individual Condominium Parcels within the condominium property operated by this Association, and for any other purpose necessary or appropriate by the law.

**1. DEFINITIONS. DEFINITION OF TERMS USED IN CONDOMINIUM DECLARATION.** As used herein or elsewhere in the condominium documents, unless otherwise provided, the terms used shall be as defined in the Condominium Act and as herein provided:

**1.1 "Act" or "Condominium Act"** means the Condominium Act, (Chapter 718 of the Florida Statutes) as it now exists or as may be amended from time to time including the definitions therein contained.

**1.2 "Apartment"** has the same meaning as the term "Unit" as defined in the Condominium Act.

**1.3 "Apartment Owner" or "Owner"** has the same meaning as the term "Unit Owner" as defined in the Condominium Act, except that for the purpose of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a Unit because of its ownership, the word "Owner" refers to the Primary Occupant and not the record owner.

**1.4 "Articles"** means Articles of Incorporation as attached hereto as Exhibit "B".

Amended and Restated Declaration of Condominium  
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1.5 "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, and such additional sums which may be assessed directly against the Unit.

1.6 "Association" means B H C INC., A Condominium Corporation, a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

1.7 "Association Property" means all real property, owned or leased by the Association for the use and benefit of the unit owners. The Association Property includes the Marina, as described in Exhibit "A-1".

1.8 "Board of Directors" or "Board" or "Directors" means the representative body which is responsible for the administration of the Association's affairs, and is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration". Each Director must be a member, or Primary Occupant (in case of units that are required to designate a Primary Occupant) the spouse of a member or Primary Occupant, the grantor of a trust described in s. 733.707(3), or a beneficiary as defined in s. 737.303(4)(b) of a trust which owns a Unit, or the spouse of such party.

1.9 "By-Laws" mean the By-Laws of the Association as attached hereto as Exhibit "C".

1.10 "Common Elements" mean and include:

1.10.1 The portions of the condominium property, (excluding the Association Property described in Exhibit "A-1" not included within the Units.

1.10.2 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.

1.10.3 An easement of support in every portion of a Unit which contributes to the support of the building, including but not limited to all load bearing interior walls within the units.

1.10.4 The property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.

1.10.5 Any other parts of the condominium property designated as common elements in this Declaration.

Amended and Restated Declaration of Condominium  
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**1.11 "Common Expenses"** means those expenses for which unit owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of common elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the By-Laws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills, common area telephones, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and a reasonable and adequate reserve fund to provide for contingencies, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable television and bulk interior pest control are specifically considered a common expense. Common expenses also include reasonable insurance for directors and officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. If bulk cable television service is obtained by the Association, expenses shall be allocated on a 1/52 basis, as permitted by law.

**1.12 "Common Surplus"** means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, above the amount of the common expenses.

**1.13 "Condominium Documents"** means this Declaration; the legal descriptions and Site Plans (collectively referred to as Surveyor's Plat) which are attached hereto as Exhibit "A"; Articles of Incorporation of B H C Inc., A Condominium Corporation attached as Exhibit "B"; By-Laws attached hereto as Exhibit "C", and the Rules and Regulations.

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

**1.15 "Condominium Property"** means the land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

**1.16 "County"** means the County of Collier, State of Florida.

**1.17 "Declaration" or "Declaration of Condominium"** means this instrument, and as it may be amended from time to time.

**1.18 "Family" or "Single Family"** shall refer to any one of the following:

**1.18.1** One natural person, his spouse, if any, and their custodial children, if any.

Amended and Restated Declaration of Condominium  
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1.18.2 Not more than two natural persons not meeting the requirement of 1.18.1 above, but who customarily reside together as a single housekeeping unit, and the custodial children of said parties, if any.

The reference to "natural" herein is intended to distinguish between any individual and a corporation or other artificial entity.

1.19 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

1.20 "Guest" means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.21 "Lease" means the grant by a unit owner of a right of use of the owner's unit for valuable consideration.

1.22 "Limited Common Elements" shall include property which is reserved for the use of a certain unit to the exclusion of other units as reflected on the condominium plat or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular unit, and where the area in question lies outside of the boundaries of the unit, the delegation of maintenance responsibility for the area (e.g. air conditioning compressors) shall serve to define the area as a limited common element.

1.23 "Primary Occupant" means a natural person approved for occupancy of a unit when title to the unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

1.24 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium. Amendments to the Rules and Regulations need not (but may) be recorded in the Public Records of the County.

1.25 "Unit" means a part of the condominium property subject to exclusive ownership.

1.26 "Unit Owner" or "Owner of a Unit" means the Owner of a condominium parcel.

Amended and Restated Declaration of Condominium  
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1.27 "Voting Interests" means and refers to the arrangement established in the Condominium Documents by which the Owners of each unit collectively are entitled to one vote in the Association matters. There are 52 units, so the total number of Voting Interests is 52.

2. **STATEMENT OF CONDOMINIUM DECLARATION.** The Ensign Corporation, a Florida Corporation submitted the property described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

3. **CONDOMINIUM NAMES.** The names by which these condominiums are identified are "Beacon House Tower One, a Condominium and Beacon House Tower Two, a Condominium".

4. **UNIT IDENTIFICATION.** The identification of each unit shall be by number and shall be as indicated on the Surveyor's Plat, Exhibit "A".

5. **SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land submitted herewith to condominium ownership and a plat thereof describing each unit, common elements and their relative location and the approximate dimensions of each unit are as shown on the surveyor's plat which is attached as Exhibit "A".

6. **VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the owner of each unit shall be 1/52nd (one voting interest per unit). Unit Owners in Beacon House Tower One own a 1/24th undivided share in the Tower One property. Unit Owner in Beacon House Tower Two own a 1/28th undivided share in the Tower Two property. Both Condominiums are operated as "one condominium" for all purposes, including cost sharing and financial matters. The sharing of common expenses is:

TOWER ONE FAMILY UNIT NUMBER	PERCENTAGE OF TOTAL VALUE IN TOWERS ONE AND TWO	TOWER TWO FAMILY UNIT NUMBER	PERCENTAGE OF TOTAL VALUE IN TOWERS ONE AND TWO
21 E	1.45 %	21 W	2.20%
22 E	2.00	22 W	2.00
23 E	1.45	23 W	2.20
24 E	2.00	24 W	2.00
31 E	1.45	31 W	2.20
32 E	2.00	32 W	2.00
33 E	1.45	33 W	2.20
34 E	2.00	34 W	2.00
41 E	1.45	41 W	2.20
42 E	2.00	42 W	2.00
43 E	1.45	43 W	2.20

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44 E	2.00	44 W	2.00
51 E	1.45	51 W	2.20
52 E	2.00	52 W	2.00
53 E	1.45	53 W	2.20
54 E	2.00	54 W	2.00
61 E	1.45	61 W	2.20
62 E	2.00	62 W	2.00
63 E	1.45	63 W	2.20
64 E	2.00	64 W	2.00
71 E	1.45	71 W	2.20
72 E	2.00	72 W	2.00
73 E	1.45	73 W	2.20
74 E	2.00	74 W	2.00
		81 W - 82 W	4.10
		83 W - 84 W	4.10

## 7. COMMON ELEMENTS; EASEMENTS.

**7.1 Definition.** The term "common elements" means all of the property submitted to condominium ownership as described in Exhibit "A" (but excluding Association Property as described in Exhibit "A-1") that is not within the unit boundaries set forth in Section 8 below. Subject to the foregoing conclusion, the common elements include without limitation the following.

### 7.1.1 The Land.

7.1.2 All portions of the building and other improvements outside the units, including all limited common elements.

7.1.3 Easements over, through, above and beneath each unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other units or common elements.

7.1.4 An easement of support in every portion of the Condominium which contributes to the support of the building.

7.1.5 The fixtures and installation required for access and utility services to more than one unit or to the common elements.

**7.2 Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the

Amended and Restated Declaration of Condominium  
(Page 9 of 39)

Condominium, and notwithstanding any of the other provision of this Declaration, may not be revoked and shall survive the removal of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the unit owners with respect to such easements.

7.2.1 **Utility and other Easements.** The Association, through the Board of Directors, has the power, without joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other access, utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

7.2.2 **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

7.2.3 **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portion 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 portion of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3 **Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

Amended and Restated Declaration of Condominium  
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**8. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A".

**8.1 Boundaries.** The Units consist of the areas or spaces contained in and bounded by the vertical projection of the unit boundary lines and the horizontal planes of the floors and ceiling elevation, as described by the attached description prepared by W.R. Wilson & Associates, Inc. which is made a part hereof and included with Exhibit "A". Such descriptions reflect the true boundaries of each unit, notwithstanding actual location of the walls, ceilings, and floors. The units do not include the land, roof, main walls, slabs, elevator shafts, staircases, halls, guest parking spaces, first floor apartments, community and commercial facilities, swimming pool and equipment, pumps, wires, conduits, plumbing and other public utility lines, which are Common Elements.

**8.2 Exclusive Use.** Each unit owner shall have the exclusive use of his unit.

**8.3 Appurtenances.** The ownership of each unit shall include, and there shall pass with each unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.3.1 Common Elements and Common Surplus.** An undivided share of the common elements and common surplus, such undivided share to be that portion set forth in Article 6 hereof.

**8.3.2 Easements.** For the benefit of the unit.

**8.3.3 Association Membership** and interest in funds and assets held by the Association.

**8.3.4 Automobile Parking Space (for Private Passenger Automobile Only)** - The privilege of using one assigned parking space (two for the penthouse units) within the area designated on the plat for parking.

**8.4 Easement to Air Space.** The appurtenances shall include an exclusive easement for the use of the air occupied by the unit as it exists at any particular time and as the unit may be altered or reconstructed from time to time.

**8.5 Cross Easements.** The appurtenances shall include the following easements from each unit owner to each other unit owner:

**8.5.1 Ingress and Egress.** Easements through the common elements for ingress and egress.

Amended and Restated Declaration of Condominium  
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**8.5.2 Maintenance, Repair and Replacement.** Easements through, over and beneath the units and common elements for maintenance, repair and replacement of the units and common elements. Such access to the units shall be only during reasonable hours except that access may be had at any time in case of emergency.

**8.5.3 Support.** Every portion of a unit contributing to the support of the unit building shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

**8.5.4 Utilities.** Easements over, through, above and beneath the units and other portions of the condominium property for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units and the common elements; provided, however, that such easements through a unit shall be only according to the plans and specifications for the unit building or as the building is constructed unless approved in writing by the unit owner.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1. Association Maintenance.** The maintenance, repair and replacement of all common elements and Association property, as well as 2nd floor sun decks, exterior windows, and the balcony sliding doors, screen frames and screening, balcony electrical outlet and lighting, and painting of the balcony wall and hallway doors for each unit, shall be performed by the Association and the costs are a common expense. The Association's maintenance responsibility includes, without limitation, exterior painting, roofing, all electrical conduit located outside each unit, plumbing fixtures and installations outside each unit, other installations located within a unit, but serving another unit, or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the common elements of the condominium, including the interior surface of the exterior boundary walls of each unit. Decorations of such surfaces (including, but not limited to paint, wallpaper, paneling, etc.) are the responsibility of the unit owner. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble, or destroy portions of the condominium property which the unit owner is required to maintain and repair, the Association shall be responsible for reinstallation or replacement of that item to its unfinished state (i.e., excluding floor coverings, wall coverings, ceilings, paint, wallpaper, paneling, etc.), provided that such items are part of the unit as originally installed by the developer, or replacements thereof, of like kind and quality. Replacement of all upgrades and/or additions, even if made by a predecessor in title, shall be the responsibility of the unit owner.

**9.2. Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and limited common elements serving only his unit, except as provided elsewhere herein, whether ordinary or extraordinary including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing), and all electrical or plumbing facilities located therein, which service

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only the individual unit; except that the Association may paint entry doors when it is painting the entire buildings (but not at other times unless otherwise determined by the Association); all other doors and the structural components thereof (including locks and hardware) within or servicing the unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations; appliances; all portions of the heating and air conditioning equipment and utility installations and connections serving an individual unit (no matter where located); carpeting and other floor covering, (including balcony areas); door and window hardware and locks; all other facilities or fixtures located or contained entirely within a own unit or limited common element area which serve only one own unit. All said areas, if located outside of the boundaries of the unit, are declared limited common elements. Parking facilities shall be maintained by the Association. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the unit owner, shall be paid to the unit owner, after the work has been completed and invoices have been submitted verifying the costs of repair.

**9.3 Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the unit owner shall also have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the condominium property; excavation; access to building roofs; removal or modification of any interior partitions walls, or cabinets, whether load-bearing or not; relocation of plumbing or electrical lines or fixtures; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the condominium property. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

9.3.1.1 Use of licensed and insured contractors; ✓

9.3.1.2 Oversight by the Association or its agent; ✓

9.3.1.3 The unit owner submitting plans as to the scope of the contemplated repair; ✓

9.3.1.4 Restrictions as to hours of work; ✓

9.3.1.5 Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.

9.3.1.6 Restrictions regarding equipment that may be parked or stored on or near the condominium property during construction. ✓

9.3.1.7 Restrictions regarding storage of materials and supplies necessary for the construction to be performed.

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Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of Contractors to perform unit owner maintenance responsibilities, provided that the Association and the owner so agree and provided that the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these condominium documents.

**9.4 Balconies.** Balconies are designated as limited common elements. The unit owner who has the right to the exclusive use of said balcony shall be responsible for the maintenance, care and preservation of: balcony floor coverings, storm shutters and any other enclosures; however, the Board may prohibit certain types of floor coverings, storm shutters and any other enclosures or require the removal of existing items when necessary for the structural preservation of the building. Unit owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5 Unit Entryway Containing HVAC Closet.** The unit entryways containing the HVAC closet servicing the following units in Tower Two are hereby designated as limited common elements for each of the respective units:

21W, 23W, 31W, 33W, 41W, 43W, 51W, 53W, 61W, 63W, 71W and 73W.

An owner of the aforesaid units may enclose the entryway containing the HVAC closet to his unit with the prior written consent of the Board of Directors, in the manner provided in Article 9.7 of the Declaration of Condominium. If such an enclosure is permitted, the owner shall be responsible for all damage and repair, as well as the cost of the renovation.

**9.6 Unit Floor Coverings.** All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms. New hard floor surfaces (tile, marble, wood, etc) may only be installed in kitchens, bathrooms, balconies, foyers and utility or laundry rooms upon prior written approval of the Board of Directors, which shall condition its approval on the unit owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring.

**9.7 Alterations by Unit Owners.** No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner change the appearance of any portion of the condominium, or make any structural change within the unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional

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Engineer licensed to practice in Florida as a condition of reviewing any requested modification, alteration or addition to the condominium property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Beacon House, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the unit owners in the manner provided in Article 9.8 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration. If any unit owner requests approval of an alteration or modification involving the removal or modification of any interior partition or wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building. If such an alteration is permitted, the owner shall be responsible for all damage and repair.

#### **9.8 Additional Unit Owner Responsibility for Alterations and Additions**

If a unit owner makes any modifications, installations, or additions to the interior or exterior of the unit, common elements, or limited common elements in accordance with Article 9.6 above, the unit owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the condominium property made by a unit owner, and duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the condominium property. In such cases, the unit owner who installs the alteration, addition, or improvement (and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien of equal dignity to the common expense lien created by this Declaration, or alternatively, said owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

**9.9 Alterations by Association.** There shall be no material alterations or substantial additions to the common elements or association property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition requires the expenditure of more than ten percent (10%) of the Association's budget in a fiscal year, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors.

**9.10 Enforcement of Maintenance.** If, after reasonable notice, the owner of a unit fails to maintain the unit or other portions of the condominium property as required above, the Association shall have, without waiver of other remedies, the right to enter the owner's unit and

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perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the unit owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for charges.

**9.11 Negligence. Damage Caused by Condition of Unit.** Each unit owner shall be liable to the Association and/or other unit owners for the expenses of any maintenance, repair or replacement of the condominium property, made necessary by his act or negligence, or by that of any member of his family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, if caused by the owner's negligence, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible). If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit(s) without prior notice to the owner(s) and take reasonable action to mitigate damage or prevent its spread, at the unit owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the owner, in the event of an emergency, and the owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for charges. Unit owners are required to shut off all water valves when they will be absent from their units for a week or more.

**10. ASSESSMENTS AND CHARGES.** Assessments against owners shall be made by the Board of Directors of the Association, in the manner provided in the By-Laws and as follows, and shall be borne by the unit owners on the same basis as their percentage of ownership of the entire condominium as set forth in Article 6.

**10.1 Liability for Assessments.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his/her share of the common expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by the abandonment of the Unit for which the assessments are made.

**10.2 Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors up to the maximum allowed by law. The Association has a lien on each condominium parcel for any unpaid assessments on such parcel, with interest, late charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is in effect until all sums secured by it have been fully paid or until barred by

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law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the condominium parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub-section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Appointment of Receiver to Collect Rental.** If the Unit owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2000), as amended from time to time.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law shall not be entitled to occupancy of the Unit or enjoyment of the common elements until such time as all unpaid assessments and gather charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him/her with respect to his/her Unit.

**10.8 Lien For Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for common expenses created herein. By way of example,

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but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall unit owner alterations or items of unit owner maintenance responsibility in connection with the Association's discharge of its common element maintenance responsibilities. The lien for charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the common expense lien.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the condominium shall be by the Association, who shall have by and through its officers and directors, such powers, authority and responsibilities as are vested in the officers and directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the By-Laws without limiting the foregoing, the Association shall have the following powers and duties:

**11.1. Access.** The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each unit and may, if determined advisable by the Board, implement a master key system.

**11.2 Assessments.** The power to make and collect regular and special assessments and other charges against Unit Owners and to lease, maintain, repair and replace the common elements.

**11.3 Recordkeeping.** 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.

**11.4 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the condominium property and in connection therewith, or to its officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of assessments and other charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.5 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the condominium property.

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**11.6 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire or transfer real property or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of unit owners as needed to amend the Declaration. No unit owner approval shall be required to purchase (or mortgage) a unit through foreclosure, deed in lieu of foreclosure, or in connection with the Association's right of first refusal set forth in Article 17 hereof. Leasing of units, common elements or Association property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or Condominium Documents.

**11.7 Membership Agreements.** The power to enter agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of unit owners as needed to amend the Declaration.

**11.8 Limitation upon Liability of Association.** Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not 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 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 the provisions hereof.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE 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, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING.**

**(a) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM 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; AND**

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(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, COLLIER COUNTY, THE CITY OF NAPLES AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(c) ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS 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 RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

11.9 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/her Unit.

12. INSURANCE. The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements and Association Property shall be as follows:

12.1 Authority to Purchase Insurance. All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

12.2 Coverage.

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**12.2.1 Casualty.** Except as otherwise provided herein, the Association shall obtain and maintain fire and extended coverage insurance with a responsible insurance company, or through alternate sources as may be available, upon all of the insurable improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, less a commercially reasonable deductible, provided the Board may exclude foundation and excavation costs in its discretion. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by §718.111(11), Florida Statutes (2000). The original policy of insurance shall be held by the Association, and Institutional Lenders shall be furnished, upon request, mortgage endorsements covering their respective interests. Each Unit Owner shall be responsible for insuring personal property located within the Unit; ceiling, floor and wall coverings, and electrical fixtures, appliances, air conditioning and heating equipment, water heater, and built-in cabinets to the extent these items are located within the Unit boundaries; and any improvements made within the Unit which are not covered by the Association policy. The owners shall also be responsible to insure any portion of the Condominium Property which may be removed from Association insurance responsibilities by virtue of future amendments to §718.111(11), Florida Statutes (2000).

**12.2.2 Liability Insurance.** The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Unit Owner will be responsible for procuring and maintaining liability insurance covering losses which may occur in and about the owner's Unit, as the Owner may deem appropriate.

**12.2.3 Worker's Compensation.** Such worker's compensation coverage as may be required by law.

**12.2.4 Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage, flood insurance, and insurance for the benefit of its employees.

**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.

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**12.4 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

**12.5 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

**12.5.1 Common Elements.** Proceeds on account of damage to Common Elements - an undivided share for each Unit Owner, such share being the same as the share in the Common Expenses appurtenant to the Unit.

**12.5.2 Unit.** Proceeds on account of damage to Units shall be held in the following undivided shares:

**12.5.2.1** When the Condominium Building is to be restored - for the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.5.2.2** When the Condominium Building is not to be restored - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.3 Mortgages.** In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except those proceeds paid to the Unit Owner and mortgagee, pursuant to the provisions of this Declaration.

**12.6 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

**12.6.1 Reconstruction or repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagee's being payable jointly to them. This is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or

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repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**12.7 Association as Agent.** The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1. Common elements.** If the damaged improvement is any of the common elements, the damaged common element shall be reconstructed or repaired.

**13.2. The Building.**

**13.2.1 Lesser damage.** If the damage renders less than 50% of the units untenable in the condominium, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

**13.2.2 Major damage.** If the damage renders more than 50% of the units untenable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire voting interests agree in writing that such reconstruction or repair shall not take place. The decision whether to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) year, to deal with exigencies in communication with unit owners caused by natural disasters or other significant casualties.

**13.2.3 Plans and specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings, as set forth in the Surveyor's Plats, or if not, then according to plans and specifications approved by the Board of Directors.

**13.3. Responsibility.** If the damage includes those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for the expense of reconstruction and repair after casualty of said portion of the work, although the Association may perform the work on behalf of the owner. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

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**13.4. Estimates of costs.** Immediately after a determination is made to rebuild or repair damage to property for which the Association or unit owner has the responsibility of reconstruction and repair, the Association or unit owner shall obtain reliable and detailed estimates of the cost to rebuild or repair.

**13.5. Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including shortfalls occasioned by a deductible), 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 who own the damaged units, and against all unit owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments on account of damage to common element shall be in proportion to the owner's share in the Common Expenses.

**13.6. Termination of condominium if not reconstructed.** If the owners vote to not reconstruct the condominium by vote as provided in Article 13.2.2 hereof, the condominium shall be terminated in accordance with the procedures set forth in Article 19.2 and 19.3 hereof.

**14. USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

**14.1. Occupancy of Units; Single Family Residence.** A condominium unit shall be used only as a single family residence. As used in the Condominium Documents, "single family" means one natural person, a group of two or more natural persons who customarily reside together as a single family housekeeping unit, each of whom is related to each of the others by blood, marriage or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. No more than two (2) persons may permanently occupy a one (1) bedroom unit, provided however that one health care assistant (nurse, etc.) may also permanently occupy a one (1) bedroom unit, in addition to the two (2) persons set forth herein, if such person is necessary for a unit owner's care, with the prior written approval of the Board of Directors. No more than four (4) persons may permanently occupy a two (2) bedroom unit. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the unit for more than thirty (30) nights during a calendar year. No unit may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred. No business or commercial activity shall be conducted in or from any unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls and other forms of communication or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. No person may occupy a unit as a unit owner, tenant, or family member thereof (i.e. occupy the unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Articles 15, 16 and 17 hereof, and may charge a reasonable fee for review of occupancy requests. Visitations by guests are governed by Article 15 of this Declaration of Condominium.

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**14.2. Nuisance.** The condominium property and association property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the condominium premises, nor which becomes a source of annoyance to the condominium residents. All property shall be kept in a neat and orderly manner. The common elements and Association Property shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents.

**14.3. Pets.** The keeping of pets within the Condominium is prohibited. The foregoing does not apply to any unit owner who is keeping a pet in the unit on the date of the recordation of this Amended and Restated Declaration. Any such owner may keep one (1) cat or one (1) dog owned on the date of recordation, but the owner may not replace the pet when it dies or is otherwise disposed of. Pets are not allowed to run free on the condominium property and must be leashed or carried at all times when outside the unit. The Board may require the removal from the condominium of any pet which becomes a reasonable source of annoyance to other residents or owners.

**14.4. Additional Restrictions.** The Rules and Regulations may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. GUEST OCCUPANCY.** A "guest" is defined as a person who enters upon the condominium property at the invitation of a unit owner or tenant, (or their respective families) for the purpose of visiting the unit owner or tenant (or their respective families), occupying the condominium unit for less than thirty days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:


**15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict guest visitation relative to convicted felons, including but not limited to registered sex offenders. Non-overnight guests need not be registered with the Association. Non-overnight guests shall be entitled to use the Condominium facilities only when accompanied by the unit owner or tenant (or an adult resident member of the unit owner's or tenant's family). The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

**15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the unit owner or tenant is in simultaneous residence. There is no requirement for

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registration of overnight guests with the Board. Under no circumstances may more than six (6) persons (including the unit owner or tenant, and their families) sleep overnight in a two (2) bedroom unit, and no more than four (4) people in a one (1) bedroom unit. Overnight guests' use of Condominium facilities is subject to the same provisions as use of Condominium facilities by Non-Overnight Guests.

**15.3 Non-Overnight Guests in the Absence of the Unit Owner or Tenant.** Unit owners and tenants are not permitted to have non-overnight guests when the unit owner or tenant is absent from the condominium. Unit owners and tenants may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (pool, parking areas, beach access, etc.).

**15.4 Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence. Unit owners are permitted to have overnight guests in the absence of the unit owner subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium. 

**15.4.1 Non-Related Overnight Guests** in the absence of the owner will be limited to two (2) occupancies in each calendar year, with each occupancy to be of one (1) week or less. The limitation on Unit density in Article 15.2 applies. Five (5) days written prior notice to the Manager is absolutely required.

**15.4.2 Related Overnight Guests** may occupy a unit in the absence of the owner. For the purpose of this clause, "related" means all persons staying in the unit on an overnight basis, in the absence of the owner, who are related to the unit owner or primary occupant (by blood, marriage or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on unit density in Article 15.2 applies. Five (5) days prior notice to the manager is absolutely required.

**15.5 Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that unit owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

**16. LEASING.** The lease of a unit is defined as occupancy of the unit by any person other than the unit owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, etc.). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "tenant" and "lessee" shall likewise be used interchangeably. Should a unit owner wish to lease his unit, he shall furnish the Association with a

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copy of the proposed lease and the name of the proposed lessee, as well as all proposed occupants. The Association shall have thirty (30) days from the receipt of notice within which to approve or disapprove of the proposed lease or proposed lessees or occupants. The Association shall give the unit owner written notice of its decision within said period. Failure to notify the unit owner shall be deemed an approval. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing is prohibited. All leases shall be for a minimum period of ninety (90) consecutive days (or three calendar months) and for a maximum period of one (1) year. No unit may be leased more than one time in a twelve month period, measured from the beginning date of the previous occupancy.

**16.1 Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a unit as a tenant, or family member of a tenant, without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Board shall require an interview of any proposed tenant and spouse, if any, and all proposed occupants of a unit except of any proposed tenant who has previously occupied a unit in the condominium and been approved by the Board. To assist in maintaining a community of congenial unit owners and tenants, one of the purposes of the personal interview is to welcome prospective tenants and to answer any questions the prospective tenants may have.

**16.2 Tenant Conduct, Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide or be deemed to provide that the tenants have read and agreed to be bound by the Declaration of Condominium, Articles of Incorporation, By-Laws and Rules and Regulations as the same may be amended from time to time (the "Condominium Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a tenant fails to abide by the Condominium Documents, the unit owner(s) shall be responsible for the conduct of the tenant and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The unit owner shall have the duty to bring his tenant's conduct into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the unit owner fails to bring the conduct of the tenant into compliance with the Condominium Documents, the Association shall have the authority to act as agent of the unit owner to undertake whatever action is necessary to abate the tenant's noncompliance with the Condominium Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association, or as agent of the unit owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the unit owner which shall be secured by a continuing lien in the same manner as assessment charges.

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**16.3 Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective lessee or unit owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the common elements or Association property. Payment of interest, claims against the deposit, refunds and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2000) as amended from time to time.

**16.4 Approval Process, Disapproval.** Any unit owner intending to lease his unit shall submit an application and any other requested information and fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the tenant interview (if required), by sending written notification to the unit owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the unit owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

**16.4.1** The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

**16.4.2** The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the Condominium Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Condominium Documents;

**16.4.3** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;

**16.4.4** The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner;

**16.4.5** All assessments, fines and other charges against the unit and/or unit owner have not been paid in full.

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**16.5 Liability.** The liability of the unit owner under the Condominium Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the unit as provided herein.

**16.6 Association Fee.** The unit owner or lessee seeking approval of a lease of a unit parcel shall pay a transfer fee for each applicant in an amount determined by the Board but not exceeding the maximum permitted by law per transaction. No charge shall be made in connection with an extension or renewal of a lease.

**17. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit owner covenants to observe:

**17.1 Forms of Ownership:**

**17.1.1 Ownership By Individuals.** A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

**17.1.2 Co-Ownership.** Co-ownership of units may be permitted. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the unit by other persons shall be as if the primary occupant was the only actual owner. Any changes in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month period. No time share estates may be created. "House Sharing" by multiple families is prohibited.

**17.1.3 Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as a short-term or transient accommodations for several individuals or families. The approval of a partnership, trustee, or corporation or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant." The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in this primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month period.

**17.1.4 Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only member from such unit, and occupancy of the unit shall be as if the life tenant were the only owner. Upon termination of the life estate, the holders of the remainder

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interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any vote, consent or approval required by the Condominium Documents or law shall be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

## **17.2 Transfers Subject to Approval.**

**17.2.1 Sale or Other Transfer.** No unit owner may dispose of a Unit or any interest in same by sale, without approval of the Board of Directors. No unit owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option or other similar transactions) without prior written approval by the Board of Directors.

**17.2.2 Gift.** If any Unit owner shall acquire his title by gift, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing date.

**17.2.3 Devise or Inheritance.** If any Unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. If any Unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors. Approval to own or occupy may not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the deceased owner by blood or by adoption.

**17.2.4 Other Transfers.** If any Unit owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such unit shall be subject to the approval of the Board of Directors. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined below.

**17.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

### **17.3.1 Notice to Board of Directors.**

**17.3.1.1 Sale.** A Unit owner intending to make a bona fide sale of his Unit or any interest in it shall give to the Board of Directors notice of such intention, together with the name and address of the intended purchaser, an executed copy of the purchase contract and its exhibits and such other information concerning the intended purchaser and the transaction as the Board of Directors may reasonably require. Such notice at the Unit owner's option may include a demand by the Unit owner that the Association furnish a purchaser of the Unit if the proposed purchaser is not approved.

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**17.3.1.2 Gift, Devise or Inheritance; Other Transfers.** A Unit owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit owner as the Board of Directors may reasonably require, and a certified copy of the instrument evidencing the owner's title.

**17.3.1.3 Failure To Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

**17.3.2 Certificate of Approval.**

**17.3.2.1 Sale.** If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, including a personal interview, the Board of Directors must either approve or disapprove the proposed transaction. The Board shall require an interview of any proposed tenant and spouse and all proposed occupants of a unit except of a tenant who has previously occupied a unit and been approved. To assist in maintaining a community of congenial unit owners, one of the purposes of the personal interview is to welcome prospective new owners and to answer any questions the prospective owners may have.

**17.3.2.2 Gift, Devise or Inheritance; other Transfers.** If the Unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information the Board of Directors must either approve or disapprove the continuance of the Unit owner's ownership of his Unit.

**17.3.2.3 Approval of Occupant.** If the Unit owner or purchaser is a corporation, partnership, trust, some other entity, or more than one individual who are not husband and wife, the approval of ownership by the corporation, partnership, trust, other entity or multiple persons shall be conditioned upon approval of a Primary Occupant.

**17.4 Disapproval by Board of Directors.** If the Board of Directors shall disapprove a transfer of ownership of a Unit, the matter shall be disposed of in the following manner:

**17.4.1 Sale.** If the proposed transaction is a sale and if the notice of sale given by the Unit owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or mail by certified mail to the Unit owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit owner must sell the Unit upon the following terms:

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**17.4.1.1** At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**17.4.1.2** The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to provide a purchaser upon the demand of the Unit owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

**17.4.2 Gifts, Devise or Inheritance; Other Transfers.** If the Unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the Unit owner of the notice and information required to be furnished, the Board of Directors shall deliver or mail by certified mail to the Unit owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit owner must sell the Unit upon the following terms:

**17.4.2.1** The sale price shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**17.4.2.2** The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Board of Directors shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Collier County, Florida, at the expense of the Unit owner.

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**17.4.3 Disapproval for Good Cause.** Approval of the Association shall be withheld only if a majority of the whole Board so votes. The Board shall consider the following factors and may confer freely with counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

**17.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium.

**17.4.3.2** The person seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

**17.4.3.3** The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts.

**17.4.3.4** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium as a tenant, unit owner or occupant of a unit;

**17.4.3.5** The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

**17.4.3.6** The unit owner requesting the transfer has had fines assessed against him or her which have not been paid; or

**17.4.3.7** All assessments and other charges against the unit have not been paid in full.

**17.4.3.8** The proposed transfer to the person seeking approval would result in that person owning legal or beneficial title, or any other ownership interest, in more than one (1) unit in this condominium. In the event that any unit owner seeks approval to purchase a second unit in the condominium, such unit owner may be approved to purchase the second unit in the condominium by the Board only if the unit owner shall agree to sell one (1) of the two units in the Condominium owned by him no later than two (2) years after the closing of the purchase and sale of the second unit in the Condominium to the unit owner. For purposes of this Section 17.4.3.8 of the Declaration only, Units 81W and 82W collectively, and Units 83W and 84W collectively, which have been combined to create two (2) separate penthouse units, shall each be considered as one (1) unit.. The intent of this provision is to avoid the sale and purchase of units for investment or other purposes unrelated to the use of the units for bona fide residential dwelling purposes, in order to prevent a transient and/or motel/hotel atmosphere in the condominium.

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If the Board disapproves a prospective transfer on the grounds for disapproval set forth above, the Association shall have no duty to purchase the unit or furnish an alternate purchaser, and the transaction shall not be made.

**17.5 Transfer Fee.** The Association may charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction.

**17.6 Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**18. METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

**18.1 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

**18.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

**18.3. Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**18.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of not less than two-thirds (2/3) of the voting interests, or by the written agreement of two-thirds (2/3) of the voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**18.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law.

**18.6 Automatic Amendment.** Whenever Chapter 718, Florida Statutes (2000) Chapter 617, Florida Statutes (2000) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to

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comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2000), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**18.7. Proviso.** Provided, however, that no amendment shall change the configuration of any unit or the share in the common elements appurtenant to it, or increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of the mortgages on such apartment shall join in the execution of the amendment, and all other unit owners approve the amendment.

**19. TERMINATION.** The Condominium shall be terminated in the following manner:

**19.1 Owner Approval.** By the agreement of 100% of the owners and the holders of liens, or such other percentage as may be specified in the Act, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded in the public records.

**19.2 Shares of Unit Owners After Termination.** After termination of the Condominium, the owners shall own the property as tenants-in-common in undivided shares, and the holders of mortgages and liens against the unit or units formerly owned by such owners shall have mortgages and liens upon the respective undivided shares of the owners. Such undivided shares of the owners shall be the owners' share of Common Expense as set forth in Article 6 hereof. All funds of the Condominium held by the Association, except for the reasonably necessary expenses of winding up, shall be disbursed to the unit owners and mortgagees as their interests may appear in the shares for sharing Common Expense set forth in Article 6. The costs incurred by the Association in connection with a termination shall be a common expense.

**19.3 Following Termination.** The property may be partitioned and sold upon the application of any owner. Provided, however, that if the Board of Directors following a termination determines to accept an offer for the sale of the condominium property, each owner shall, by his acceptance of a deed to his unit, be deemed to have granted power of attorney to the Board of Directors to execute such deeds and other documents required to effect sale. In such event, any action for partition shall be held in abeyance pending sale, and upon the consummation thereof shall be discontinued by all parties thereto.

**20. CONDEMNATION.**

**20.1. Awards.** The taking of all or any part of the condominium property by the condemnation or eminent domain shall be deemed to be a casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting

Amended and Restated Declaration of Condominium  
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unit owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that owner.

**20.2. Determination Whether to Continue Condominium.** Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Paragraph 13 hereof.

**20.3. Distribution of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Association property and shall be owned and distributed in the manner provided for insurance proceeds when the condominium is terminated after a casualty. If the Association is not terminated after condemnation, the size of the Condominium may be reduced. The owners of condemned units, if any, will share in awards and special assessments as provided below.

**20.4. Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**20.5. Units Reduced but Tenantable.** If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the condominium.

**20.5.1 Restoration of Unit.** The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit.

**20.5.2 Distribution of Surplus.** The balance of the award, 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 mortgagees.

**20.5.3 Adjustment of Shares in Common Elements.** If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

**20.6. Units not Tenantable.** If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenable, 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 effected in the condominium:

Amended and Restated Declaration of Condominium  
(Page 36 of 39)



**20.6.1 Payment of Award.** The condemnation award immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).

**20.6.2 Addition to Common Elements.** If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.

**20.6.3 Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to recondition the remaining portion of the unit, the amount required for those purposes shall be raised by special assessment against all of the unit owners who will continue as owners of any unit after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the Common Expenses after the changes effected by the taking.

**20.7. Taking of Common Elements.** Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they share Common Expenses after adjustment of these shares on account of the condemnation.

**20.8. Amendment of Declaration.** The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **21. COMPLIANCE AND DEFAULT.**

**21.1. Duty to Comply; Right to Sue.** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, this Declaration, the documents creating the Association, the By-Laws and the Rules and Regulations. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

**21.1.1** The Association;

**21.1.2** A unit owner; or

**21.1.3** Anyone who occupies a unit as a tenant or is a guest in a unit.

**21.2. Waiver of Rights.** The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or

Amended and Restated Declaration of Condominium  
(Page 37 of 39)

condition in the future. A provision of the Condominium Act may not be waived if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the By-Laws.

**21.3. Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a unit owner, tenant, guest, invitee or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal. The Association may also recover attorney's fees it incurs because of noncompliance with the condominium documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent assessments, and fees reasonably incurred by the Association in obtaining compliance with the Condominium Documents. Said costs and fees shall be secured by a lien for charges, as provided in Article 10.8 hereof.

**21.4. No Election of Remedies.** All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

**21.5. Notice of Lien or Suit.**

**21.5.1 Notice of Lien.** A unit owner shall give to the Association written notice of every lien upon his unit other than for permitted first mortgages, taxes and special assessments, within five (5) days after the unit owner receives actual notice of the attachment thereof.

**21.5.2 Notice of Suit.** A unit owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given five (5) days after the unit owner receives actual knowledge thereof.

**21.5.3 Failure to Comply.** Failure of an owner to comply with this Section 22.5 will not affect the validity of any judicial suit; however, the failure may render the owner liable to any party injured by such failure.

**22. MISCELLANEOUS PROVISIONS.**

**22.1.** The covenants and restrictions as herein contained, or forming a part of the condominium documents, shall be deemed to run with the land.

**22.2.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said condominium documents shall remain in full force and effect.

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22.3. These condominium documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all unit owners.

22.4. All notices shall be given as provided in the By-Laws.

22.5. There shall be no limitation upon sale, lease or occupancy of any unit based upon race, creed, color, sex, religion, national origin, handicap or familial status. The Association may make reasonable accommodations, including waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.

22.6. The Developer granted to each unit owner a non-exclusive easement for streets, walks and other rights of way serving the unit as a part of the common elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each unit owner.

22.7. All persons joining this Declaration subjects his interest to the provisions of this Declaration and the provisions of Chapter 718, Florida Statutes, as now or hereafter amended.

22.8. In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Section 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the By-Laws.

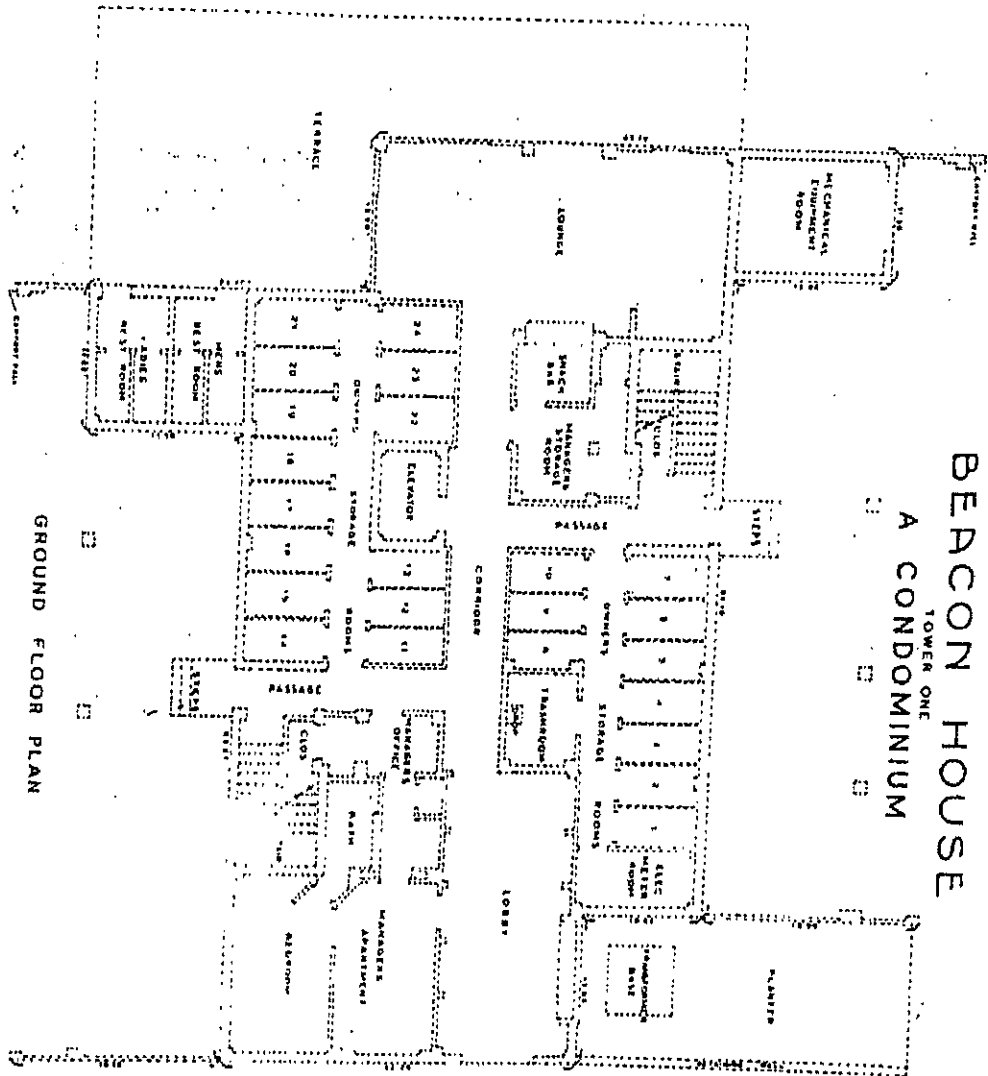
22.9. The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached hereto.

142035\_1.DOC

Amended and Restated Declaration of Condominium  
(Page 39 of 39)

LAW OFFICES  
BECKER & POLIAKOFF, P.A. • COLLIER PLACE 1 • 3003 TAMiami TRAIL, NORTH, SUITE 210 • NAPLES, FLORIDA 34103  
TELEPHONE (941) 261-9555





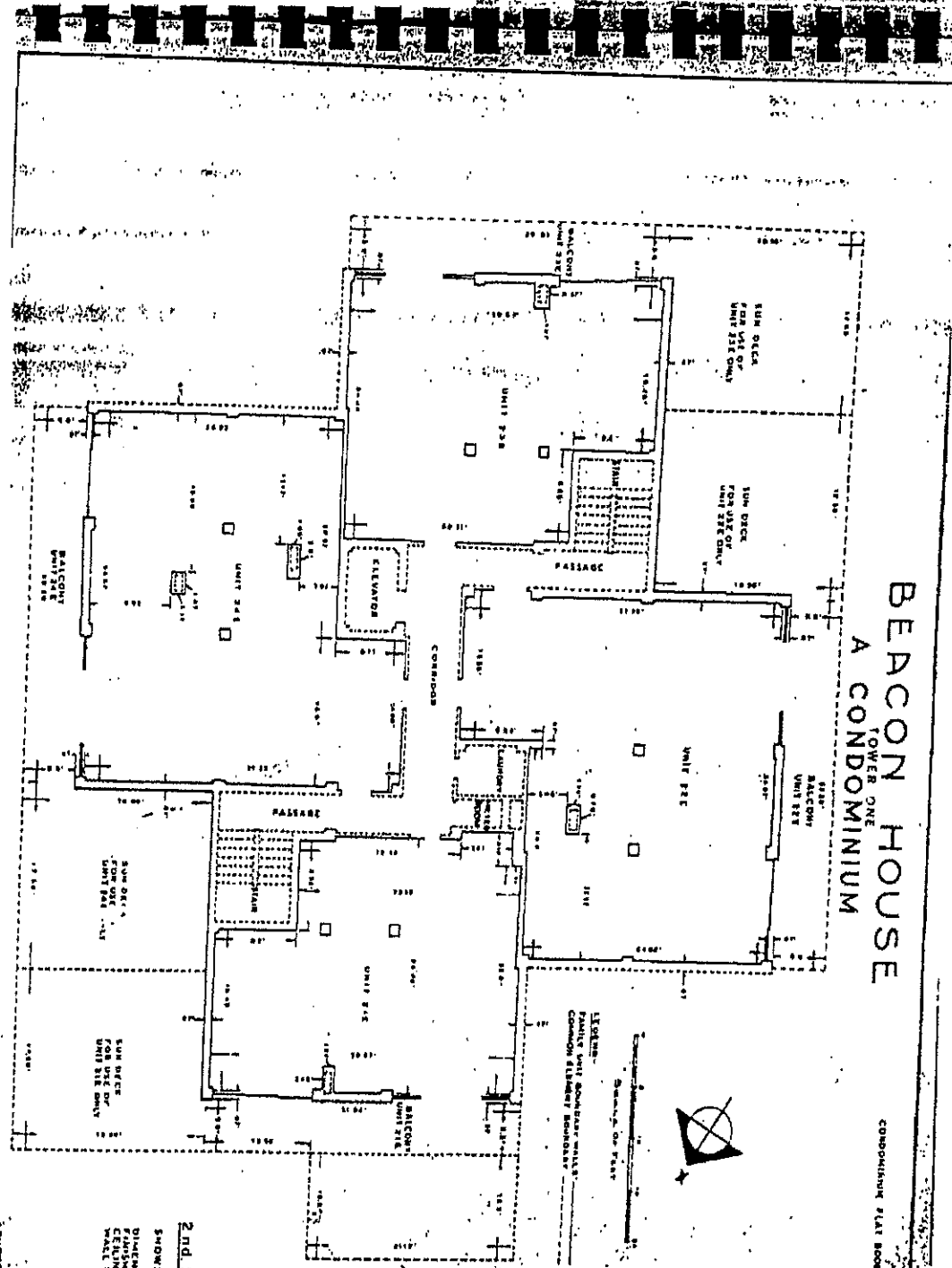
GROUND FLOOR PLAN

BEACON HOUSE  
TOWER ONE  
A CONDOMINIUM

CONDOMINIUM PLAT 100N, Page 11



EXHIBIT 2



BEACON HOUSE  
LOWER ONE  
A CONDOMINIUM

CONDOMINIUM FLOOR PLAN



LEGEND:  
FAMILY UNIT BOUNDARY WALLS  
COMMON ELEMENT BOUNDARY

2ND FLOOR PLAN

SHOWING FAMILY UNIT  
DIMENSIONS ARE FROM THE  
FINISHED FLOOR TO UNFINISHED  
WALL TO UNFINISHED WALL

EXHIBIT 2  
SHEET 3 OF 3 SHEETS

BEACON HOUSE  
TOWER GATE  
A CONDOMINIUM

**COMODOLUX**

**PAT NO.** 7-10

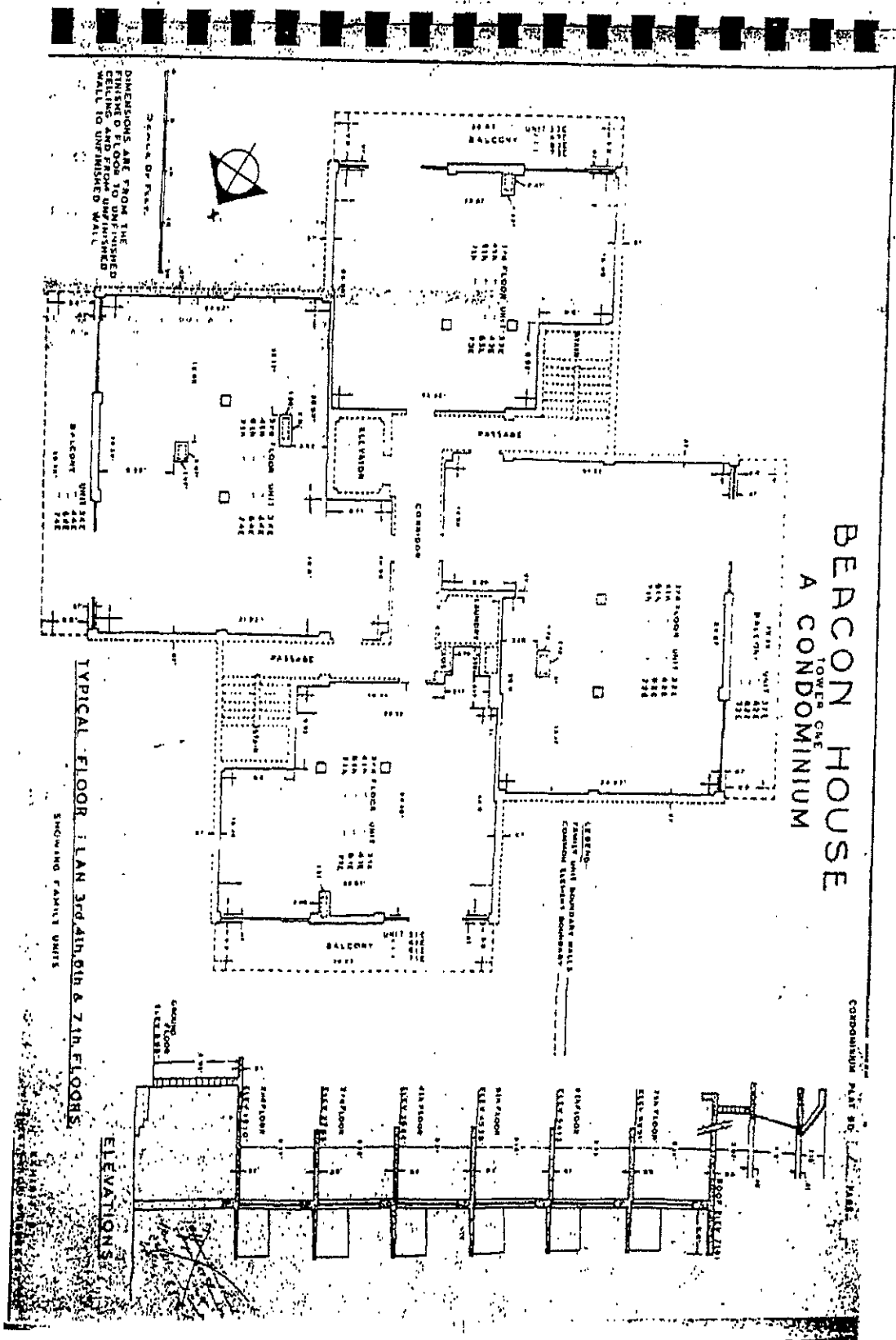
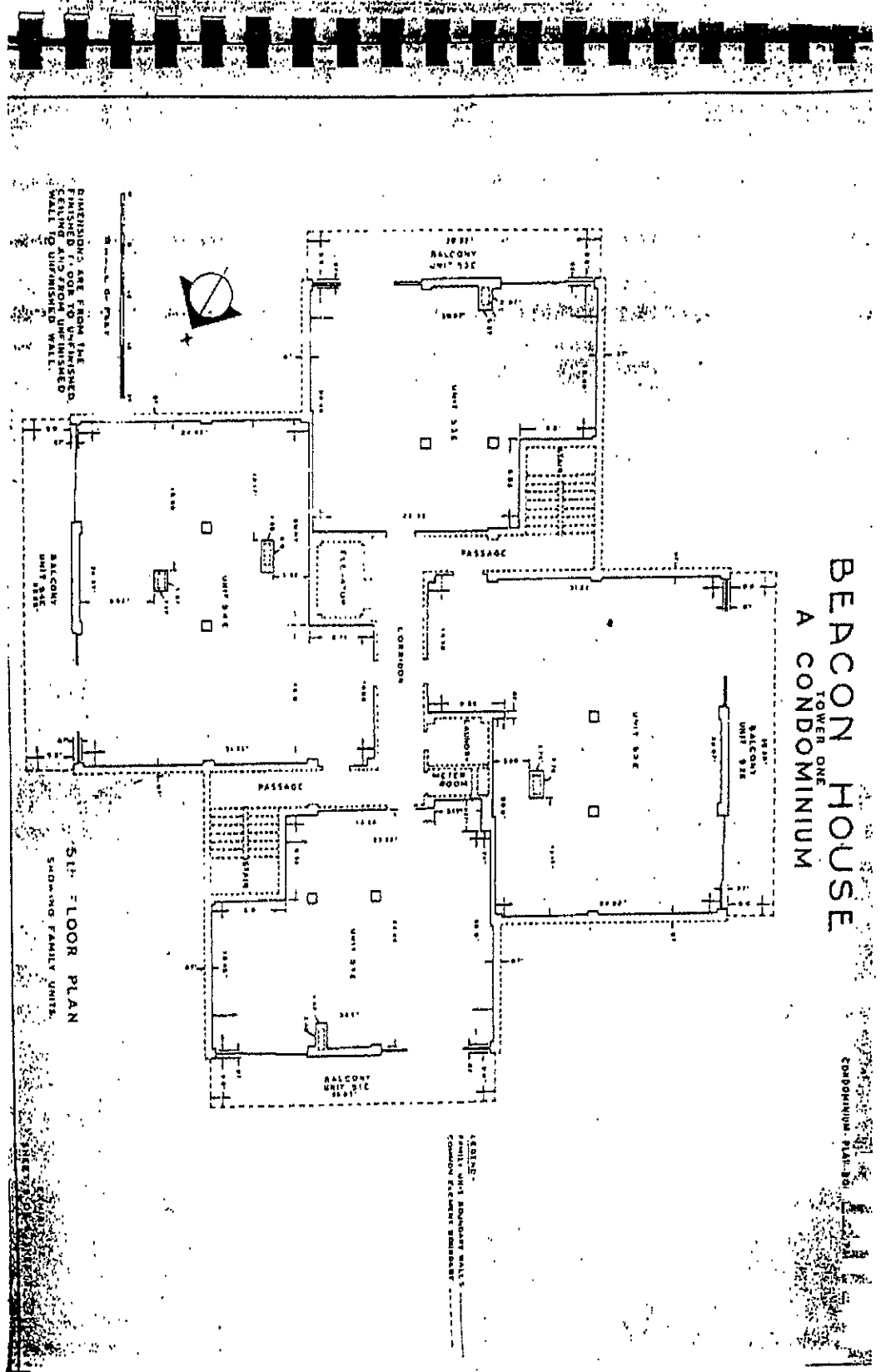


EXHIBIT "A"  
Page 4 of 13





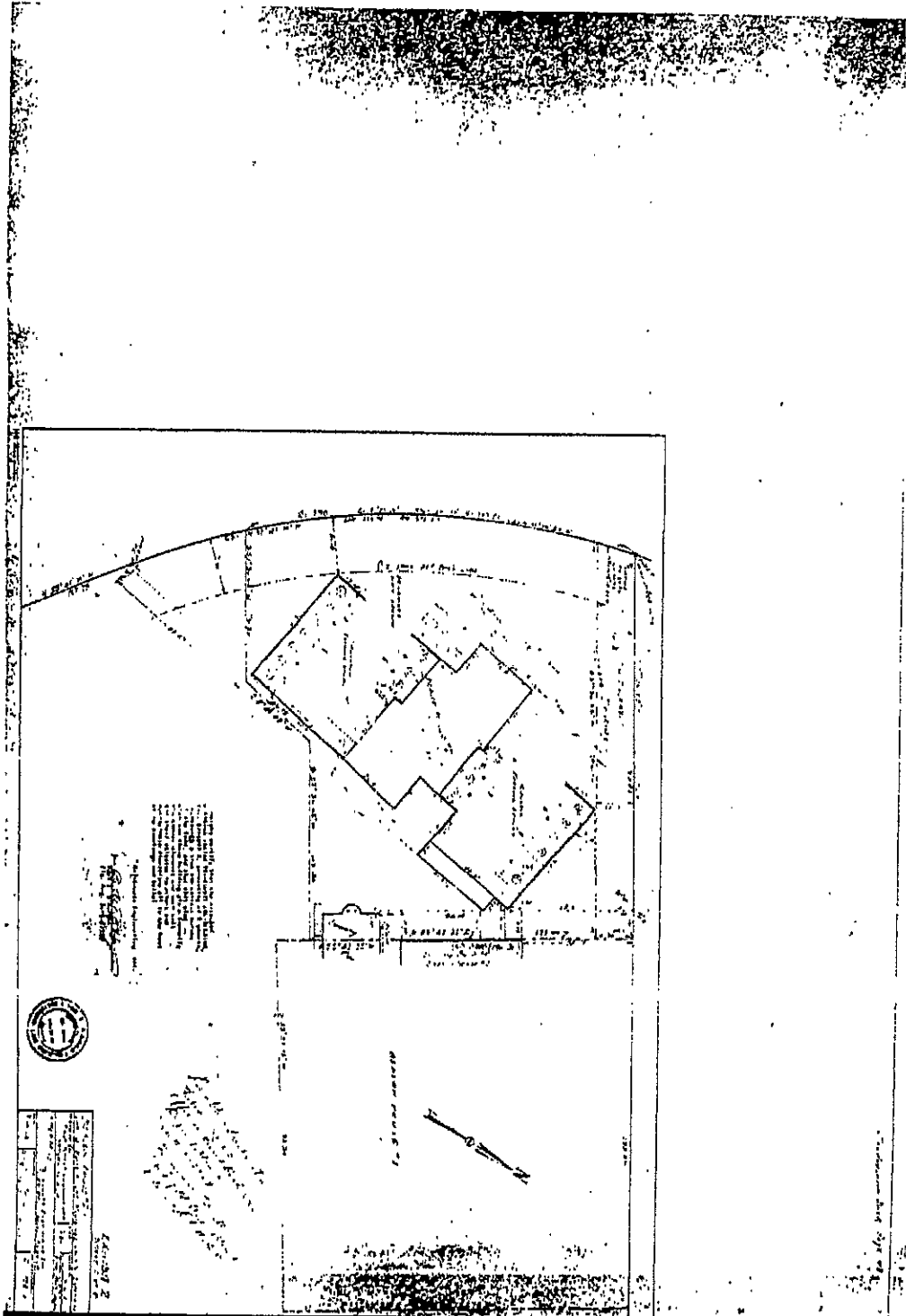


EXHIBIT "A"  
Page 6 of 13

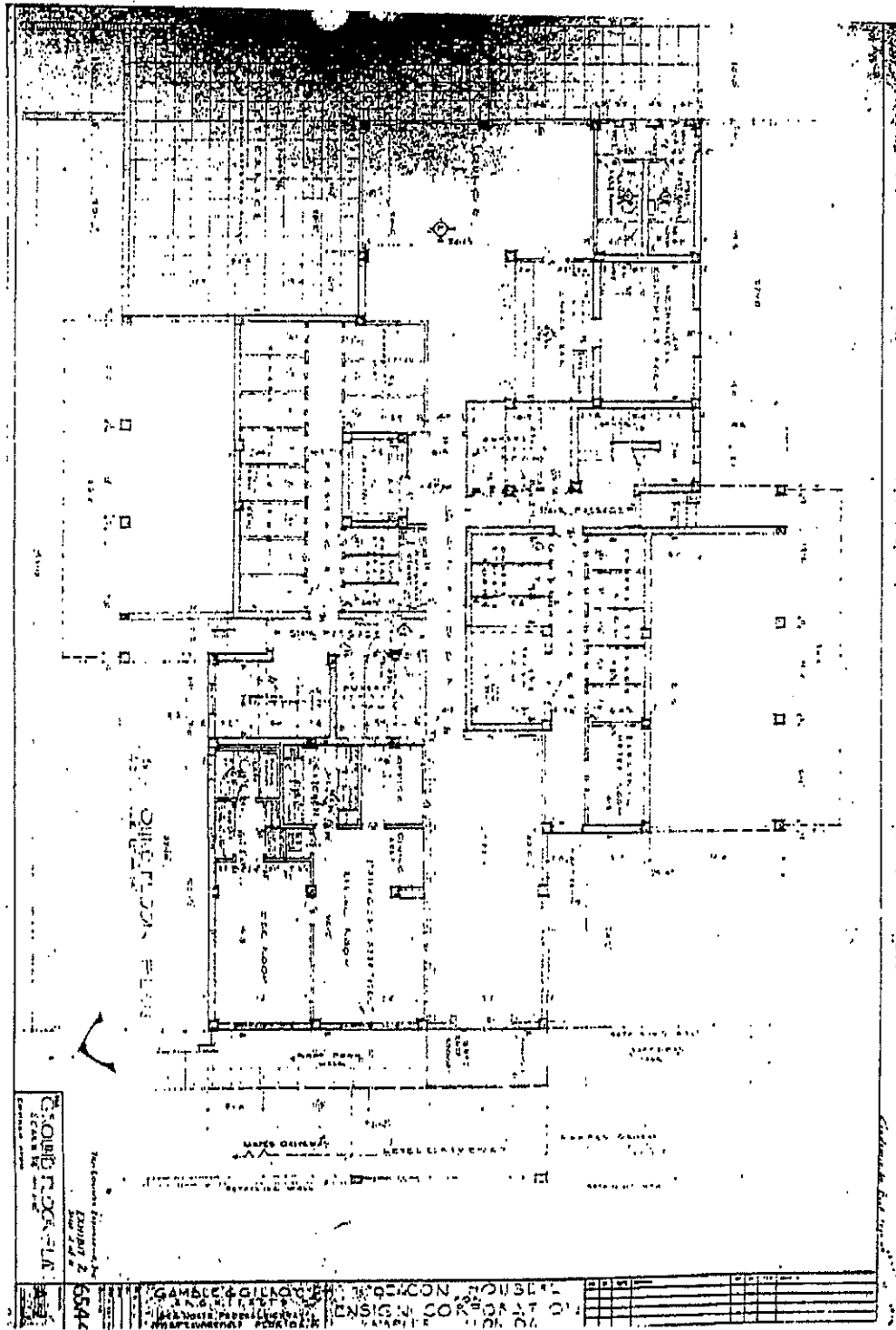
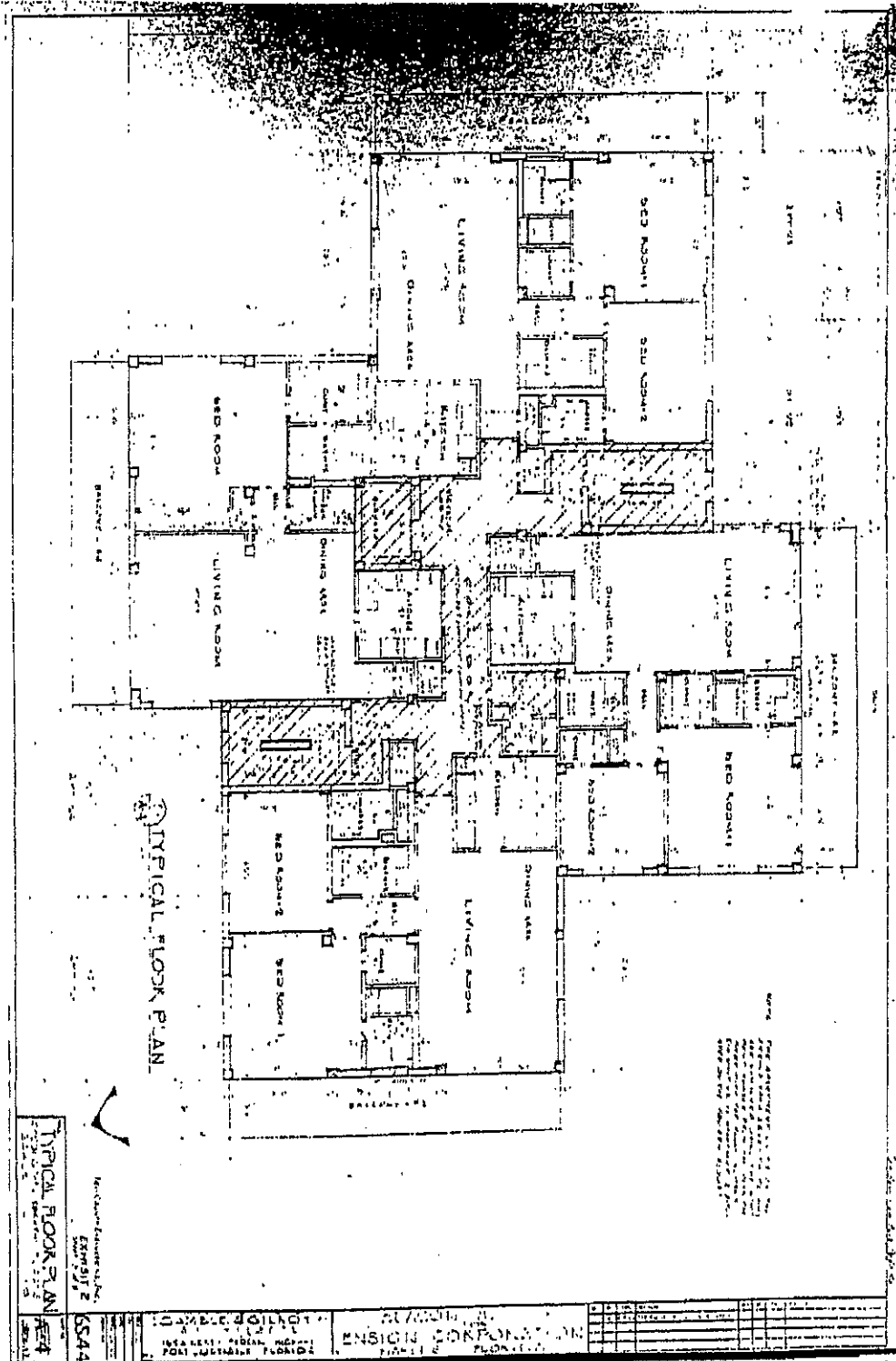


EXHIBIT "A"  
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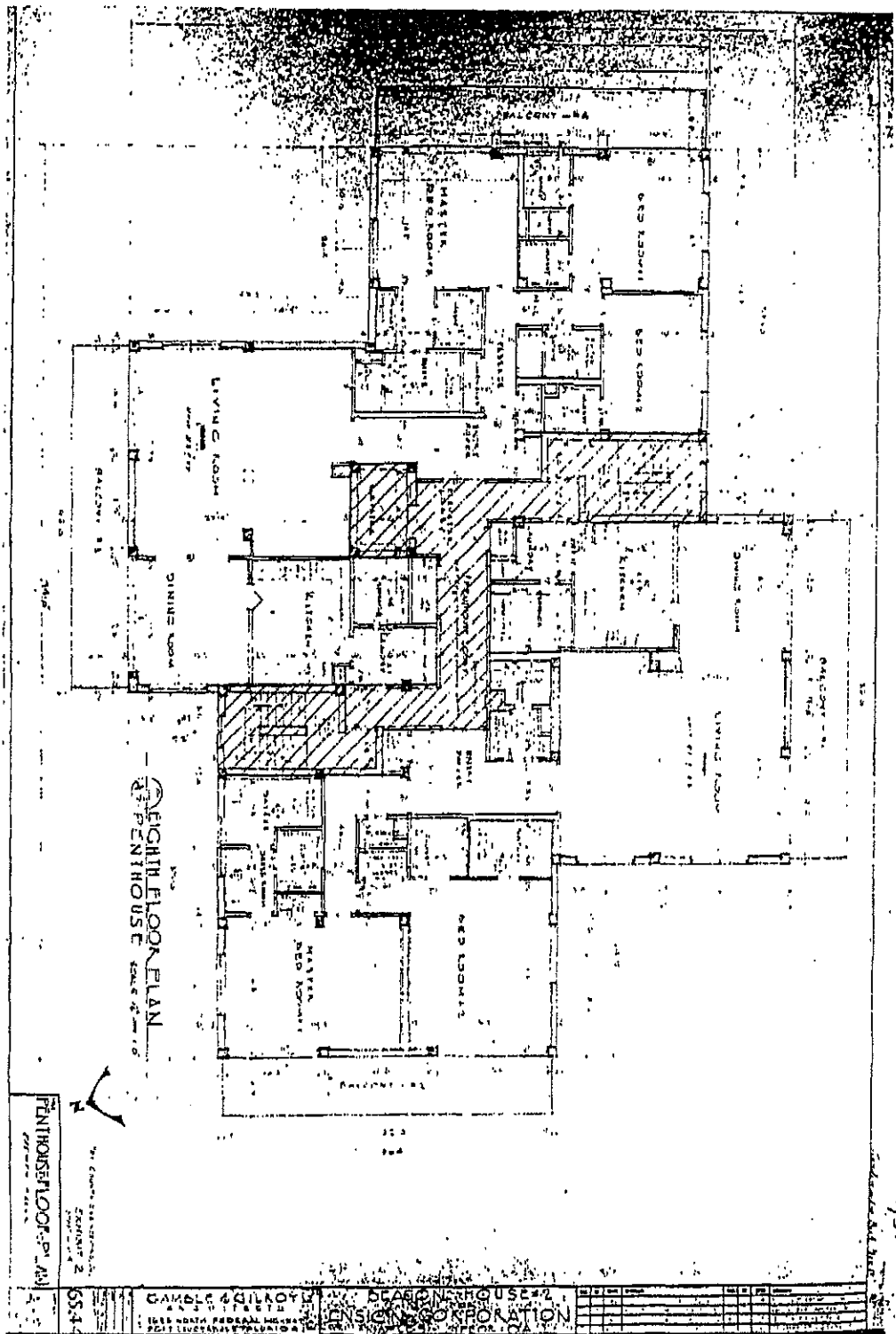
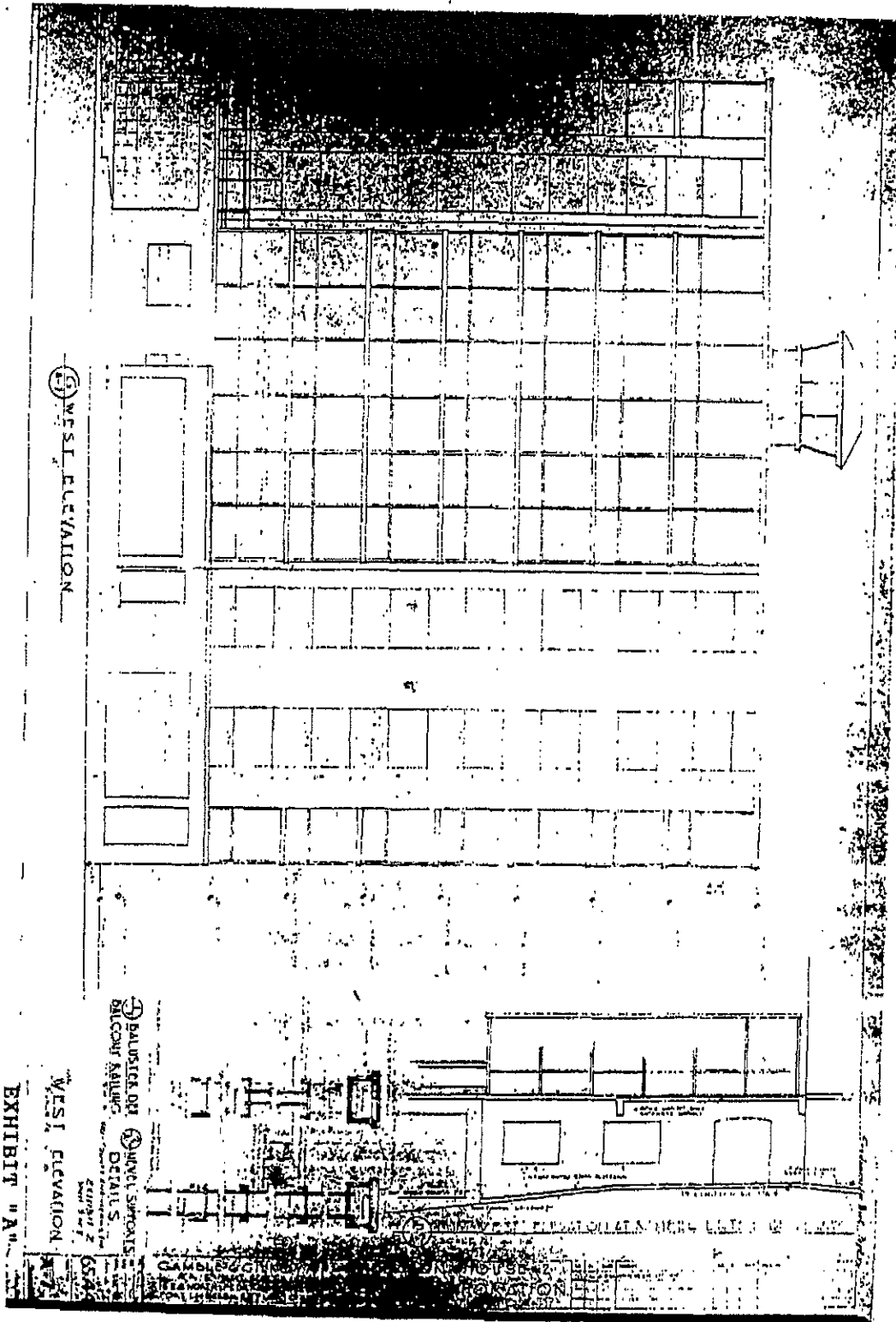
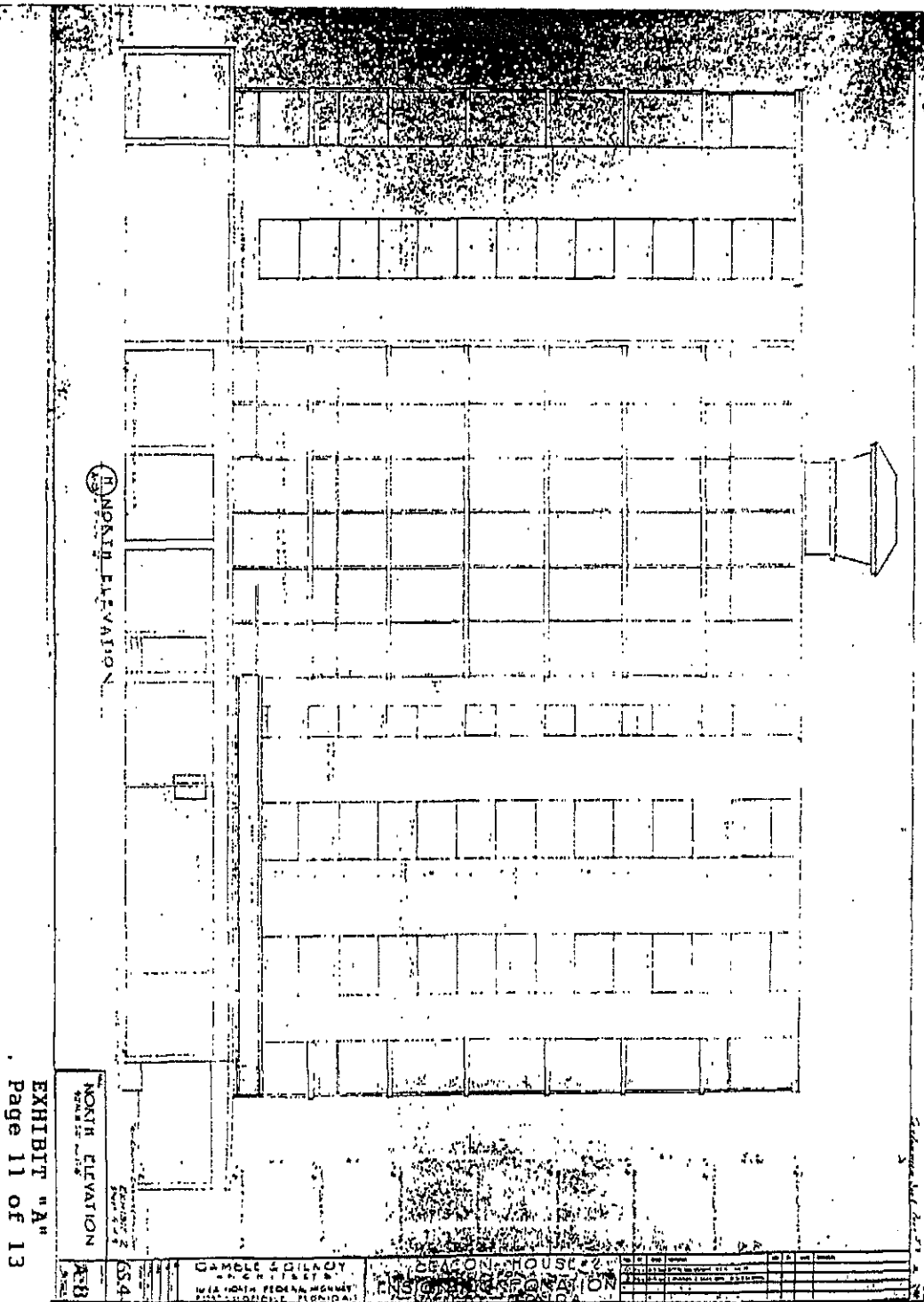
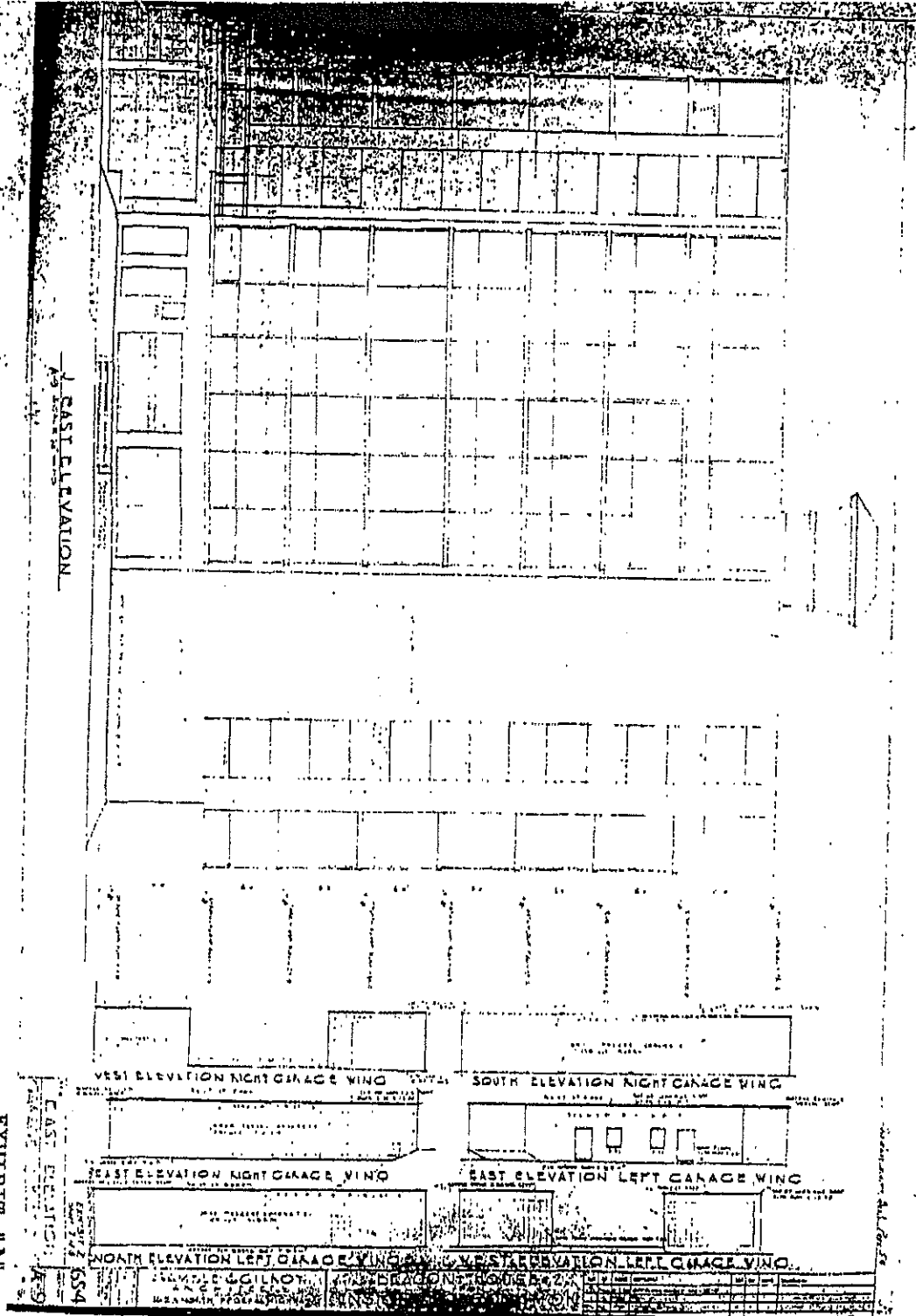


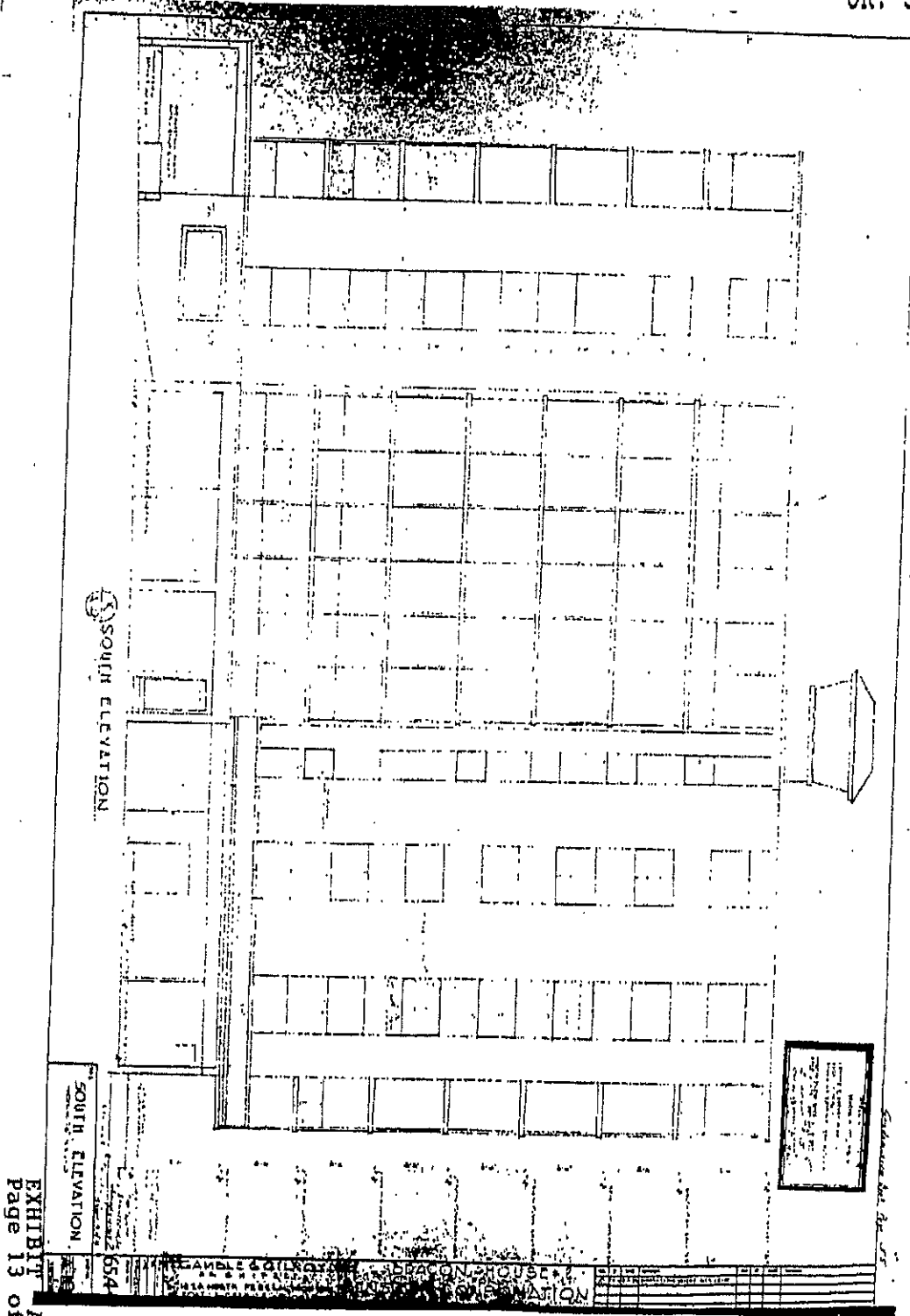
EXHIBIT "A"  
Page 9 of 13





1/53







ME 284 NO 118

LEGAL DESCRIPTION  
BEACH HOUSE MARINA

Commencing at the Northwest corner of Lot 14, Block "A",  
The Moorings, Unit No. 2, as recorded in Plat Book 3,  
Pages 82 and 84 of the Public Records of Collier County,  
Florida;

Thence along the northerly line of said Lot 14,  
N 77°34'05" E, 392.12 feet, for a PLACE OF BEGINNING;  
Thence S 17°12'55" E, 184.79 feet;  
Thence S 22°27'05" E, 192.30 feet;  
Thence N 32°43'25" W, 18.21 feet;  
Thence S 87°38'05" W, 17.00 feet;  
Thence S 31°32'32" E, 211.12 feet to the Northerly line  
of Mooring Line Drive;

Thence along said Northerly line 154.50 feet along the  
arc of a circular curve concave to the South, radius  
530.00 feet, chord bearing N 61°09'49" E, 153.94 feet,  
to a point of tangency;

Thence N 64°30'50" E, 67.98 feet;

Thence N 30°29'10" W, 60.00 feet to a point of curvature;

Thence 326.61 feet along the arc of a circular curve con-

cave to the West, radius 1145.92 feet, chord bearing

N 28°39'05" W, 325.51 feet to a point of reverse curvature;

Thence 23.13 feet along the arc of a circular curve con-

cave to the East, radius 300.00 feet, chord bearing

N 24°36'25" W, 23.13 feet;

Thence S 57°36'05" E, 60.45 feet to the Place of Beginning;

All being part of said Lot 14, Block "A", The Moorings,  
Unit No. 2.

Recorded in Official Records Book  
of COLLIER COUNTY, FLORIDA  
MARGARET T. SCOTT  
Clerk of Circuit Court

EXHIBIT "A-1"  
Page 1 of 1.

OR: 3012 PG: 1871

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF B H C INC., A CONDOMINIUM CORPORATION**

**SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION -  
SEE CURRENT AMENDED AND RESTATED ARTICLES  
OF INCORPORATION FOR CURRENT TEXT**

These are the Amended and Restated Articles of Incorporation for B H C Inc., A Condominium Corporation originally filed with the Florida Department of State the 22nd day of June 1964, under Charter Number 707467. Matters of only historical interest have been omitted. Amendments included have been added pursuant to Chapter 617, Florida Statutes.

**1. NAME.** The name of the corporation shall be B H C INC., A CONDOMINIUM CORPORATION. For convenience, the corporation shall be referred to in this instrument as the "Association", The Declaration of Condominium as "Declaration", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

**2. PURPOSE.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Collier County, Florida, and known as Beacon House Tower One and Beacon House Tower Two, a Condominium (the "Condominium").

**3. DEFINITIONS.** The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Condominium recorded in the Public Records of Collier County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

**4. POWERS.** The powers of the Association shall include and be governed by the following:

**4.1 General.** The Association shall have all of the common- law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles or of the Act.

**4.2 Enumeration.** The Association shall have all the powers and duties set forth in the Act and as it may be amended from time to time, except as limited by the Declaration of Condominium, as it may be amended from time to time, these Articles and as they may be

Exhibit "B" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated Articles of Incorporation)  
Page 1 of 5

amended from time to time, the By-Laws and as they may be amended from time to time, including but not limited to the following:

**4.2.1** To make and collect assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.

**4.2.2** To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Condominium.

**4.2.3** To maintain, repair, replace, reconstruct, add to, and operate the Condominium property and other property acquired or leased by the Association for use by Unit Owners.

**4.2.4** To purchase insurance upon the Condominium property and insurance for the protection of the Association, its officers, Directors, and members as Unit Owners.

**4.2.5** To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium property and for the health, comfort, safety and welfare of the Unit Owners.

**4.2.6** To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of units as may be provided by the Declaration.

**4.2.7** To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Condominium property.

**4.2.8** To contract for the management of the Condominium and any facilities used by the Unit Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific approval of the Board of Directors or the membership of the Association.

**4.2.9** To employ personnel to perform the services required for proper operation of the Condominium.

**4.3 Condominium property.** All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

**4.4 Distribution of income.** The Association shall make no distribution of income to its members, directors or officers.

Exhibit "B" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated Articles of Incorporation)  
Page 2 of 5

**4.5 Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the By-Laws.

**5. MEMBERS.** The members of the Association shall consist of all of the record owners of units in the Condominium, and after termination of the Condominium shall consist of those who were members at the time of the termination and their successors and assigns.

**5.1 Assignment.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.

**5.2 Voting.** On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one unit shall be entitled to one vote for each Unit owned.

**5.3 Meetings.** The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

**6. TERM OF EXISTENCE.** The Association shall have perpetual existence.

**7. OFFICERS.** The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

**8. DIRECTORS.**

**8.1 Number and Qualification.** The property, business and affairs of the Association shall be managed by a board consisting of the number of Directors determined by the By-Laws, but which shall consist of no fewer than three (3) Directors.

**8.2 Duties and powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

Exhibit "B" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated Articles of Incorporation)  
Page 3 of 5

**8.3 Election; removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

**9. BY-LAWS.** The By-Laws of this Corporation may be altered, amended or repealed in the manner provided in the By-Laws.

**10. AMENDMENTS.** These Articles may be amended in the following manner:

**10.1 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

**10.2 Proposed Amendment Format.** Proposals to amend existing Articles of Incorporation shall contain the full text of the Article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF ARTICLE. SEE ARTICLE NUMBER FOR PRESENT TEXT."

**10.3. Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3) of the entire voting interests of the Association, or by the written agreement of two-thirds (2/3) of the entire voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**10.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law and filed with the Secretary of State according to law.

**10.6 Automatic Amendment.** These Articles shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium. Whenever Chapter 718, Florida Statutes (2000) Chapter 617, Florida Statutes (2000) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Articles, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to these Articles as the Board deems

Exhibit "B" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated Articles of Incorporation)  
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necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2000), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**10.7. Proviso.** Provided, however, that no amendment shall change the configuration of any unit or the share in the common elements appurtenant to it, or increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of the mortgages on such apartment shall join in the execution of the amendment, and all other unit owners approve the amendment.

**11. REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT.** The registered office address and the name of the registered agent of the corporation shall be as determined by the Board of Directors from time to time.

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Exhibit "B" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated Articles of Incorporation)  
Page 5 of 5

LAW OFFICES  
BECKER & POLIAKOFF, P.A. • COLLIER PLACE I • 3003 TAMiami TRAIL NORTH, SUITE 210 • NAPLES, FLORIDA 34103  
TELEPHONE (941) 261-0555

**AMENDED AND RESTATED BY-LAWS**

**OF**

**B H C INC. A CONDOMINIUM CORPORATION**

**SUBSTANTIAL REWORDING OF BY-LAWS -  
SEE CURRENT BY-LAWS FOR CURRENT TEXT**

**1. IDENTITY.** These are the Amended and Restated By-Laws (hereinafter "By-Laws") of B H C Inc., A Condominium Corporation, a Florida not-for-profit Corporation formed for the purpose of administering Beacon House Tower One and Beacon House Tower Two, a Condominium (hereinafter "the Condominium") which is located at 2170 Gulf Shore Boulevard North, Naples, Florida 34102, upon the lands described in the Amended and Restated Declaration of Condominium. (The corporation may hereafter be referred to as the "Association.")

**1.1 Office.** The office of the Association shall be at 2170 Gulf Shore Boulevard North, Naples, Florida, 34102 or such other location within Collier County, as may from time to time be determined by the Board of Directors.

**1.2 Fiscal Year.** The fiscal year of the Association shall be May 1 to April 30, unless otherwise determined by the Board of Directors.

**1.3 Seal.** The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

**1.4 Definitions.** All terms used in these By-Laws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium for the Condominium and the Florida Condominium Act (Chapter 718, Florida Statutes, 2000), all as amended from time to time.

**2. MEMBERS' MEETINGS.**

**2.1 Annual Meetings.** Annual members' meetings shall be held at such convenient location in Collier County as may be determined by the Board of Directors. The annual meeting shall be held on the date and time determined by the Board for the purpose of transacting any business authorized to be transacted by the members.

Exhibit "C" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated By-Laws)  
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**2.2 Special Meetings.** Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors and shall be called by the President within a reasonable time of receipt of written notice from 25% of the voting interests of the Association. Members' meetings to recall a member or members of the Board of Directors may be called by 10% of the voting interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to §718.112(2)(k) (2000), as amended from time to time.

**2.3 Notice of Members' Meetings.** Notice of all members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each unit owner by United States regular mail, unless waived in writing, at least 14 days prior to the meeting as to annual meetings and 10 days as to special meetings. Hand delivery is acceptable where permissible by law. Any members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4 next following. An officer of the Association or other person providing notice shall execute an affidavit of mailing per §718.112(2)(d)(2) (2000), as amended from time to time, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property.

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 his authorized representative's) attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**2.4 Board of Directors Election Meetings - Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.

**2.4.1** Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

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**2.4.2** There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the units must cast a ballot in order to have a valid election and elections shall be decided by a plurality of those votes cast.

**2.4.3** In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held and the pre-qualified candidates shall automatically become members of the Board after the annual meeting.

**2.4.4** It is the intention of this Article 2.4 to permit the "opting out" of the statutory election procedures found at §718.112(2)(d), Florida Statutes (2000). To this end, the Board may establish additional election rules as it deems appropriate to ensure a fair election process. Substantial compliance with these By-Laws relative to election procedures is sufficient.

**2.5 Quorum/Voting.** A quorum at members' meetings shall consist of persons entitled to cast a majority of the voting interests of the entire membership. Decisions made by a majority of the voting interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such decisions as may by F.S. 718 or the Condominium Documents require a larger percentage in which case the percentage required in F.S. 718 or the Condominium Documents shall govern.

**2.6 Indivisible Vote.** Each unit shall have one indivisible vote. If a unit is owned by a corporation, any officer may vote on behalf of said corporation. If a unit is owned by a partnership, any partner may vote on behalf of the partnership. If a unit is owned in trust, any grantor or beneficiary of a trust shall be entitled to vote. Any person asserting the right to vote on behalf of a unit owned by an artificial entity shall be conclusively presumed to be entitled to vote on behalf of said unit, unless the unit has filed voting instructions with the Association designating some other person entitled to vote. If multiple owners or non-individual of a unit cannot agree on a vote, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary.

**2.7 Proxies.** Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated, and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Association before or at the voter registration immediately preceding the meeting, or adjournment thereof. Except as specifically otherwise provided by law, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes regarding reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or By-Laws; and for any other matter which F.S. 718 requires or permits a vote of the unit owners. No proxy, limited or general,

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shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. An executed telegram or cablegram appearing to have been transmitted by the proxy giver, or a photographic, photostatic, facsimile, or equivalent reproduction of a proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**2.8 No Quorum.** If any meeting of members cannot be organized because a quorum is not present, or if insufficient voting interests are represented to approve a proposed item of Association business, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

**2.9 Order of Business.** The order of business at annual members' meetings and, as far as applicable at all other members' meetings, shall be:

- 2.9.1 Call to order by the President;
- 2.9.2 At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a member or a director);
- 2.9.3 Appointment by the Chair of inspectors of election;
- 2.9.4 Election of Directors;
- 2.9.5 Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;
- 2.9.6 Proof of notice of the meeting or waiver of notice;
- 2.9.7 Disposal of unapproved minutes;
- 2.9.8 Reports of officers;
- 2.9.9 Reports of committees;
- 2.9.10 Unfinished business;
- 2.9.11 New business;

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### 2.9.12 Adjournment.

**2.10 Action Without a Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of voting interests to approve the action. Members may also consent in writing to action taken at a meeting, before or after the meeting, by providing a written statement to that effect and their vote shall be fully counted as though they had attended the meeting.

## 3. BOARD OF DIRECTORS.

**3.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of seven (7) Directors. All Directors shall be unit owners or the spouse of a unit owner. When a unit is owned by a corporation, a partnership, or similar entity, the primary occupant, as designated pursuant to the Declaration of Condominium, and the spouse of the primary occupant shall be eligible for Board membership. A grantor of a trust described in s. 733.707(3), Florida Statutes or a beneficiary as defined in s. 737.303(4)(b), Florida Statutes, and the spouses of such persons, shall be considered eligible for Board membership. No more than one (1) natural person from each unit shall be eligible to stand for election for Board membership, or serve on the Board. Persons who are convicted felons, who have not had their civil rights restored, are not eligible to serve on the Board. All Directors will be elected for a two (2) year term. It is the intention of these By-Laws that a staggered Directorate be maintained. To implement and maintain a staggered Directorate, the Board may hold seats in future elections open for one or two year terms, when necessary or appropriate. In such cases, those receiving the higher number of votes shall be elected to the longer terms and when no election is held, the decision shall be made by agreement of the affected parties, or by lot. The term of each Director's service shall extend until such elected term is completed and thereafter until a successor is duly elected and qualified or until the Director is recalled in the manner provided in the Condominium Act, or resigns. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated. No member shall be eligible for election or appointment to the office of Director for more than two consecutive two (2) year terms. Two years after the conclusion of the Director's two (2) consecutive terms, a former Director will again be eligible for election or appointment to the office of Director.

**3.2 Board Vacancies.** Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term as provided in Article 3.1; provided that when a Director has been recalled by the membership, the vacancy created by such removal cannot be filled with the same person as has been removed from the Board.

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**3.3 Organizational Meeting.** The organizational meeting of each newly-elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held immediately following the annual meeting of the members.

**3.4 Regular Meetings.** 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 regular meetings, unless fixed by Board resolution, shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile at least two days prior to the day named for such meeting.

**3.5 Special Meetings.** Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than two days' notice of the meeting (except in an emergency) shall be given to each Director personally or by mail, electronic mail, telephone, or facsimile, which notice shall state the time, place, and purpose of the meeting.

**3.6 Waiver of Notice.** Any Director may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Section 2.3 of these By-Laws at least 48 continuous hours in advance of the meeting for the attention of unit owners, except in an emergency. Meetings at which a regular monthly or quarterly assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be considered, shall be mailed or delivered to the unit owners and posted conspicuously as provided in Section 2.3 of these By-Laws not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice and shall be filed among the official records of the Association.

**3.8 Owner Participation in Board Meetings.** Meetings of the Board of Directors at which a majority of the members of the Board is present, shall be open to all unit owners. The right to attend such meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of unit owner statements. Unless otherwise provided by the Board, each unit owner is entitled to speak for three minutes with reference to designated agenda items.

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Board meetings subject to the attorney-client privilege shall not be subject to unit owner observation.

**3.9 Board Meetings, Quorum, and Voting.** The content of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board members. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the entire Board of Directors present at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each member present shall be recorded in the minutes. Directors may not abstain from voting except in the case of an asserted conflict of interest. If at any meeting of the Board there be less than a quorum present, the Director(s) 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 may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official vote for the Board's meeting.

**3.10 Presiding Officer.** The presiding officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

**3.11 Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1 To Assess.** The Directors shall adopt budgets and make and collect special and periodic assessments against owners to defray the costs of the Association.

**4.2 To Expend Association Funds.** The Directors shall use proceeds of assessments in the exercise of its powers and duties.

**4.3 To Maintain The Condominium Property.** The Directors shall maintain, repair, replace, and operate the property within the Condominium.

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**4.4 To Adopt Regulations.** The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the units, common elements, limited common elements, and Association property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration of Condominium.

**4.5 To Reconstruct After Casualty.** The Directors may reconstruct the units, common elements, limited common elements, and association property improvements after casualty and to further improve the property, as specified in the Declaration of Condominium.

**4.6 To Approve Transfers.** The Directors may approve or disapprove proposed transactions or transfers in the manner provided by the Declaration of Condominium, and to charge a preset fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of units, the Board may require the posting of a security deposit to protect against damages to the common elements or Association property, in the manner provided by law.

**4.7 To Enforce.** The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and to interpret said Condominium Documents as the final arbiter of their meaning.

**4.8 To Contract.** The Directors may contract for management, maintenance and operation of the Condominium.

**4.9 To Insure.** The Directors shall carry insurance for the protection of the unit owners and the Association, pursuant to requirements contained in the Declaration of Condominium and Chapter 718 (2000), Florida Statutes, both as amended from time to time.

**4.10 To Pay Utility Bills.** The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to owners of individual units.

**4.11 To Hire and Discharge.** The Directors may employ personnel and designate other officers to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12 To Sue and Be Sued.** The Directors may bring and defend suits.

**4.13 To Deal in Real and Personal Property.** The Directors may make and execute contracts, deeds, mortgages, notes, and other evidence of indebtedness, leases, and other instruments by its officers and to purchase, own, lease, convey, and encumber real and personal

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property. The Directors may grant easements and licenses over the condominium property necessary or desirable for proper operation of the Condominium.

**4.14 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding 5% of the gross budget (including reserves) except for contracts with employees of the Association, attorneys, accountants, architects, engineers and landscape architects, and community association managers, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within the County serving the Association. The Association need not accept the lowest bid. If a contract was awarded under the competitive bid procedures of this Section, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Section. The Association may opt out of competitive bidding requirements, by a unit owner vote, in the manner provided by law.

**4.15 To Levy Fines.** The Directors may, pursuant to §718.303, Florida Statutes (2000) impose fines against a unit not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws by owners, occupants, licensees, tenants, and invitees.

**4.15.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

**4.15.2** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days. Notice shall be deemed effective when deposited in the United States Mail, certified, return receipt requested, to the address of the unit owner listed in the official records of the Association, and as to tenants, to the mailing address for the unit. Said notice shall include:

**4.15.2.1** A statement of the date, time, and place of the hearing;

**4.15.2.2** A statement of the provisions of the Declaration, Articles of Incorporation, By-Laws, Rules and

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Regulations, Board policies and resolutions or laws which have allegedly been violated; and

**4.15.2.3** A short and plain statement of the matters asserted by the Association.

**4.15.3** 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. The hearing shall be held before a Committee of other unit owners. If the Committee does not agree with the fine, the fine may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining hearings), at trial, and on appeal.

**4.16 To Appoint Committees.** The Directors may appoint committees and delegate to such committees those powers and duties of the Association as the Board deems advisable. All committees and committee members shall serve at the pleasure of the Board. Committees of the Association as defined in the Florida Statutes 718.103(6) (2000), as amended from time to time, shall conduct their affairs in the same manner as provided in these By-Laws for Board of Director meetings. All other committees may meet and conduct their affairs in private without prior notice or owner participation, unless otherwise directed by the Board of Directors.

**4.17 To Ensure Fire Safety Compliance.** The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the condominium units with the applicable Fire and Life Safety Code.

**4.18 To Approve the Installation of Hurricane Shutters.** The Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board, provided that the Board may condition approval upon the unit owner's agreement to execute appropriate documentation regarding same.

**4.19 To Exercise Emergency Powers.** In the event of any "emergency" as defined in Section 4.19.8 below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by §617.0207, and §617.0303, Florida Statutes (2000), as amended from time to time.

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4.19.1 The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

4.19.2 The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

4.19.3 During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

4.19.4 Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

4.19.5 The Board may use reserve funds to meet Association needs.

4.19.6 Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency By-Laws shall incur no liability for doing so, except in the case of willful misconduct.

4.19.7 These emergency By-Laws shall supersede any inconsistent or contrary provisions of the By-Laws during the period of the emergency.

4.19.8 For purposes of this Section only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- 4.19.8.1 a state of emergency declared by local civil or law enforcement authorities;
- 4.19.8.2 a hurricane warning;
- 4.19.8.3 a partial or complete evacuation order;
- 4.19.8.4 federal or state "disaster area" status; or

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4.19.8.5 a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

4.19.8.6 an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the unit owners, the condominium property, or association property.

## 5. OFFICERS.

**5.1 Executive Officers.** The executive officers of the Association shall be the President, Vice President, Secretary and Treasurer, who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person, except the President, may hold two or more offices. Assistant officers may be appointed by the Board; they need not be directors.

**5.2 President — Powers and Duties.** The President shall be the chief executive officer of the Association, shall preside at all meetings of the Board of Directors and Association meetings. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3 Vice-President — Powers and Duties.** The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4 Secretary — Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association. He shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5 Treasurer — Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall

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keep the assessment rolls and accounts of the members. He shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6 Officers' Compensation.** Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of expenses reasonably incurred.

**6. Indemnification.**

**6.1 Indemnity.** The Association shall indemnify any officer, director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, and committee members as permitted by Florida law.

**6.2 Defense.** To the extent that a director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

**6.3 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, or committee member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 6.

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**6.4 Miscellaneous.** The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

**6.5 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, or agent of the Association, or a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

**6.6 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 6 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

**6.7 Delegation.** To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

**7. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a business-like manner. These, plus records of all receipts and expenditures and all other official records, as defined in §718.111(12) (2000), as amended from time to time, shall be available for inspection by unit owners and Board members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

**8. FISCAL MANAGEMENT.** Shall be in accordance with the following provisions:

**8.1 Budget.** The budget shall be adopted by the Board. A proposed annual budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance, and administration of the Condominium. The proposed budget may also include expenses of security, in-house communications, directors and officers insurance, transportation services, bulk cable or master antenna television, and interior pest control, all of which are declared to be common expenses under these By-Laws. The proposed budget shall include reserves per §718.112(2)(f)2 (2000), as amended from time to time, the funding of which may be waived or reduced by the owners. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests at a duly called meeting of the Association, or by the written approval of a majority of the voting interests.

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The budget will contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the budget shall be mailed to each member as provided in Article 8.2 hereof. If an adopted budget requires assessments against the unit owners in any fiscal or calendar year which exceed 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owner within 30 days upon not less than 10 days written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. The adoption of the budget requires a vote of not less than a majority vote of all the voting interests. The Board of Directors may propose a budget to the unit owners at a meeting of members or in writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all the voting interests in writing, the budget is adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors goes into effect as scheduled. In determining whether assessments exceed 115 percent of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, anticipated expenses by the condominium association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the condominium property must be excluded from the computation.

**8.2 Mailing.** A copy of the proposed annual budget shall be mailed or hand-delivered to the unit owners not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting.

**8.3 Assessments.** The annual shares of the unit owners of the common expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**8.4 Special Assessments.** Assessments for common expenses which are not provided for and funded in the Budget or an amendment to the Budget may be made by the Board of Directors, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such assessments shall be considered shall be posted and mailed to each unit owner as provided in Article 3.7 hereof, except in the event of an emergency. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will

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be considered common surplus, and may, at the discretion of the Board, either be returned to the unit owners or applied as a credit towards future assessments.

**8.5 Assessment Roll.** The assessments for common expenses and charges shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board of Directors as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

**8.6 Liability for Assessments and Charges.** A unit owner shall be liable for all assessments and charges coming due while the owner of a unit, and such owner and owner's grantees or successors after a voluntary conveyance or other acquisition of title shall be jointly and severally liable for all unpaid assessments and charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any common elements or Association property or by abandonment of the unit for which the assessments are due. Where a mortgagee holding a first mortgage of record obtains title to a unit by foreclosure, such mortgagee and its successors and assigns shall only be liable for such unit's assessments, charges, or share of the common expenses which became due prior to acquisition of title as provided in the Florida Condominium Act (2000), as amended from time to time.

**8.7 Liens for Assessments.** The unpaid portion of an assessment, including an accelerated assessment which is due, together with all costs, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the unit.

**8.8 Lien for Charges.** Unpaid charges due to the Association together with costs, interest, late fees, and reasonable attorney's fees shall be secured by a common law and contractual lien upon the unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**8.9 Collection — Interest; Administrative Late Fee; Application of Payments.** Assessments or charges paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25 or 5% of each installment of the assessment for which payment is late, or the maximum late fee permissible by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's incurred, and then to the assessment payment first due.

**8.10 Collection — Suit.** The Association, at its option, may enforce collection of delinquent assessments or charges by suit at law, by foreclosure of the lien securing the assessments

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or charges, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal. The Association may attach rental income for delinquent units and may withhold approval for the sale, lease, or other transfer of a unit, or any interest therein, until all past due assessments, interest, late fees, costs, and attorney's fees have been paid in full. The Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the lien as provided by law.

**8.11 Accounts.** All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

**8.12 Association Depository.** The Depository of the Association in which the funds of the Association shall be deposited shall be financial institutions authorized to do business in Florida which carry FDIC insurance. Principal of association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors.

**8.13 Commingling of Funds.** All funds shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under §468.432, Florida Statutes (2000), as amended from time to time, no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in §468.431, Florida Statutes (2000), as amended from time to time or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

**8.14 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with §718.111(13) (Supp. 2000), as amended from time to time, as determined in the Rule adopted by the Division of Florida Land Sales, Condominium and Mobile Homes based upon the amount of the Association's budget from time to time.

**8.15 Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in §718.112(2)(j) (2000), as amended from time to time, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding.

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(Amended and Restated By-Laws)  
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In the case of a licensed manager, the cost of bonding may be reimbursed by the Association as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

**9. PARLIAMENTARY RULES.** Robert's Rules of Order (latest edition) shall be used as a guide in the conduct of members' meetings, Board meetings, and committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these By-Laws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings unless he or the Board of Directors designates a third person, as Parliamentarian, shall be binding unless contrary to law.

**10. BY-LAW AMENDMENTS.** Amendments to the By-Laws shall be adopted in the following manner:

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

**10.2 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the voting interests.

**10.3 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of sixty-six and two-thirds percent (66 2/3%) of the entire voting interests of the Association, or by the written agreement of two-thirds (2/3) of the entire voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**10.4 Effective Date.** An amendment when adopted shall become effective only after being recorded in the Collier County Public Records according to law.

**10.5 Automatic Amendment.** These By-Laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever Chapter 718, Florida Statutes (2000) Chapter 617, Florida Statutes (2000) or other applicable statutes or administrative regulations are amended to impose procedural requirements less stringent than set forth in these By-Laws, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to these By-Laws as the Board deems necessary to comply with such operational changes as may be enacted by future

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amendments to Chapters 607, 617, and 718 of the Florida Statutes (2000), or such other statutes or administrative regulations as required for the operation of the Association.

**10.6 Proposed Amendment Format.** Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW NUMBER \_\_\_ FOR PRESENT TEXT."

## **11. DISPUTE RESOLUTION.**

**11.1 Mandatory Arbitration.** If unresolved, disputes between the Board and unit owners as defined in §718.1255(1) (2000), as amended from time to time, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation, so long as the Condominium Act requires such arbitration.

**11.2 Unit Owner Inquiries.** When a unit owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the unit owner within 30 days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the Association from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one inquiry per month pertinent to any particular unit. In the event of a grievance of a unit owner against the Association, the Board of Directors, or a member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration) and they shall be allowed a period of 30 days in which to resolve the grievance.

**11.3 Other Remedies.** Nothing herein shall preclude the Association from pursuing any remedy for the violation of the Condominium Documents or disputes with a unit owner or other party as maybe available to the Association under the laws of the State of Florida or the Condominium Documents.

**12. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these By-Laws and the Condominium Documents.

Exhibit "C" to Amended and Restated  
Declaration of Condominium  
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**12.1 Conflicts.** The term "Condominium Documents," as used in these By-Laws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these By-Laws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

1. Declaration of Condominium;
2. Articles of Incorporation;
3. By-Laws; and
4. Rules and Regulations.

**12.2 Gender.** The use of the term "he," "she," "his," "hers," "their," "theirs" and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

**12.3 Severability.** In the event that any provisions of these By-Laws are deemed invalid, the remaining provisions shall be deemed in full force and effect.

142828\_1.DOC

Exhibit "C" to Amended and Restated  
Declaration of Condominium  
(Amended and Restated By-Laws)  
Page 20 of 20

LAW OFFICES  
BECKER & POLIAKOFF, P.A. • COLLIER PLACE I • 3003 TAMiami TRAIL NORTH, SUITE 210 • NAPLES, FLORIDA 34103  
TELEPHONE (941) 261-9555

WHEN RECORDED RETURN TO:

Gregory W. Marler, Esq.  
 BECKER & POLIAKOFF, P.A.  
 999 Vanderbilt Beach Road  
 Suite 501  
 Naples, Florida 34108

Recording Fee:

\$27.00

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
 06/03/2009 at 10:30AM DWIGHT H. BROCK, CLERK

REC FEE 27.00

Retn:

BECKER POLIAKOFF PA  
 999 VANDERBILT BEACH RD #501  
 NAPLES FL 34108

## CERTIFICATE OF AMENDMENT

### B H C INC., A CONDOMINIUM CORPORATION

I HEREBY CERTIFY that the following amendment to the Combined Amended and Restated Declaration of Condominium for Beacon House Tower One, a Condominium, and Beacon House Tower Two, a Condominium, were duly adopted by the Association membership at the duly noticed Special Members' Meeting of the Association on the 15th day of May, 2009. Said amendments were approved by a proper percentage of voting interests of the Association. The Combined Amended and Restated Declaration of Condominium for Beacon House Tower One, a Condominium, and Beacon House Tower Two, a Condominium is recorded at O.R. Book 3012 Page 1817, et seq., of the Public Records of Collier County, Florida.

Additions indicated by underlining.Deletions indicated by ~~striking through~~.

#### Amendment:

Section 16  
 Combined Amended and Restated  
 Declaration of Condominium

16. **LEASING.** The lease of a unit is defined as occupancy of the unit by any person other than the unit owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, etc.). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "tenant" and "lessee" shall likewise be used interchangeably. Should a unit owner wish to lease his unit, he shall furnish the Association with a copy of the fully executed proposed lease, the application form and fee required by Section 16.4 below, any other requested information reasonably required by the Association, and the security deposit required by Section 16.3, and the name of the proposed lessee, as well as all proposed occupants. The Association shall have thirty (30) days from the receipt of notice within which to determine final approval or final disapproval of the proposed lease or proposed lessees or occupants. The Association shall give the unit owner written notice of its decision within said period. Failure to notify the unit owner within thirty (30) days of receipt by the Association of all requested information and documents shall be deemed an approval. One or more of the current Board of Directors, as specifically designated by resolution of the Board, may grant written, conditional approval of such a lease pending final approval by the Board as provided in Section 16.1.—No individual rooms may be rented and no transient tenants may be accommodated. "Rent-

Certificate of Amendment

Page 1 of 3

sharing" and subleasing is prohibited. All leases shall be for a minimum period of ninety (90) consecutive days (or three calendar months) and for a maximum period of one (1) year. No unit may be leased more than one-two (2) times in a twelve-month period~~any calendar year~~, measured from the beginning date of the previous occupancy.

**16.1 Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a unit as a tenant, or family member of a tenant, without prior approval of the Board of Directors. If conditional approval is granted and occupancy is assumed by the tenant, but final approval is not granted, the tenant shall be obligated to vacate immediately. Failure to so vacate will permit the Association to assert all rights of the Owner/Landlord under the lease and otherwise, to evict the disapproved tenant. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. All proposed tenants shall be subject to a background/criminal check by a professional agency of the Association's choosing. The Board shall require an interview of any proposed tenant and spouse, if any, and all proposed occupants of a unit except of any proposed tenant who has previously occupied a unit in the condominium and been approved by the Board. To assist in maintaining a community of congenial unit owners and tenants, one of the purposes of the personal interview is to welcome prospective tenants and to answer any questions the prospective tenants may have.

(Section 16.2 remains unchanged)

**16.3 Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective lessee or unit owner place a security deposit in an amount not to exceed the equivalent of one month's rent of One Thousand Dollars (\$1,000) into an escrow account maintained by the Association to protect against damage to the common elements or Association property and to pay any fines that may be levied upon the tenant. Payment of interest, claims against the deposit, refunds and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (20080) as amended from time to time.

**16.4 Approval Process, Disapproval.** Any unit owner intending to lease his unit shall submit an application and any other reasonably requested information and fees a One Hundred Dollar (\$100) application fee at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the tenant interview (if required), by sending written notification to the unit owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the unit owner shall receive a short statement indicating the reason for the disapproval,

Certificate of Amendment

Page 2 of 3

and the lease shall not be made, renewed or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

(Sections 16.4.1, through 16.5 remain unchanged)

**16.6 Association Fee.** The unit owner or lessee seeking approval of a lease of a unit parcel shall pay a transfer fee for each applicant in an amount determined by the Board of One Hundred Dollars (\$100), except married co-occupants shall only be charged \$100 total and any fee shall but not exceeding the maximum permitted by law per transaction. No charge shall be made in connection with an extension or renewal of a lease.

WITNESSES:

(TWO)

**B H C INC., A CONDOMINIUM CORPORATION**

*John D. Pheasant*  
Signature

BY: *Arthur Anselmo*  
Arthur Anselmo, Vice-President

*John D. Pheasant*  
Printed Name

Date: *5/29/09*

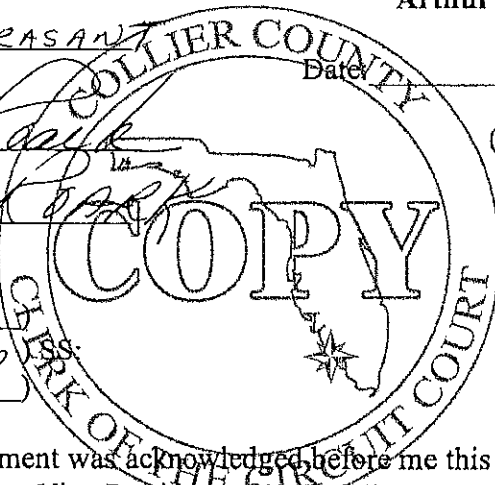
*Brenda S. Roark*  
Signature

*BRENDA S. ROARK*  
Printed Name

(CORPORATE SEAL)

STATE OF *FLORIDA*

COUNTY OF *COLLIER*



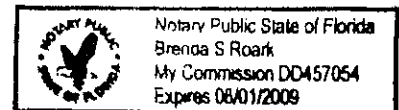
The foregoing instrument was acknowledged before me this *29<sup>th</sup>* day of *May*, 2009, by **Arthur Anselmo** as Vice-President of **B H C Inc., a Condominium Corporation**, a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced (type of identification) \_\_\_\_\_ as identification. (If no source of identification is indicated, then he is personally known to me.)

*Brenda S. Roark*  
Notary Public

Printed Name

My commission expires:

NAP\_DB: 45213\_1



Certificate of Amendment

Page 3 of 3

LAW OFFICES

BECKER & POLIAKOFF, P.A., 999 VANDERBILT BEACH ROAD • SUITE 501 • NAPLES, FL 34108  
TELEPHONE (239) 552-3200

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
11/14/2006 at 12:42PM DWIGHT E. BROCK, CLERK

RXC FEE 10.00  
COPIES 1.00

Retn:  
BEACON HOUSE CONDO ASSOC  
12250 TAMiami TRL N #102  
NAPLES FL 34113

## Certificate of Amendment

### COMBINED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

#### BEACON HOUSE TOWER ONE, A CONDOMINIUM AND BEACON HOUSE TOWER TWO, A CONDOMINIUM

The undersigned, being the duly elected and acting President and Secretary, respectively, of B.H.C., Inc. A Condominium Corporation, a Florida corporation not-for-profit, do hereby certify that a Special Meeting of the members held December 20, 2005, where a quorum was present, after due notice, the following resolution was approved and adopted by at least two-thirds of the voting interest which members present at such meeting or represented by proxy are entitled to cast, for the purpose of amending the Combined Amended and Restated Declaration Of Condominium, recorded in Official Records Book, 3012, Page 1817, Public Records of Collier County, Florida.

Additions indicated by underlining.  
Deletions indicated by ~~striking through~~.

#### Article 9, Section 9.6

9. MAINTENANCE, ALTERATION ~~AND IMPROVEMENTS~~. Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

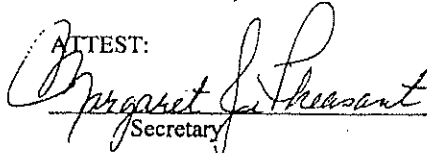
(Sections 9.1 through 9.5 Unchanged)

9.6 Unit Floor Coverings. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms. New hard floor surfaces (tile, marble, wood, etc.) may only be installed in kitchens, bathrooms, balconies, foyers and utility or laundry rooms upon prior written approval of the Board of Directors, which shall condition its approval on the unit owner's proof of the installation of appropriate sound deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. All units above the ground floor may have floors covered with padding and wall to wall carpeting. However, hard surface floor materials, such as ceramic or vinyl tiles, marble, pefgo or wood, may be applied to the floor surfaces of any portion of the unit if there is an approved form of sound deadening or sound insulation material placed between such flooring and the unfinished floor surface of the unit. Specifications for sound proofing and hard flooring must be approved in writing by the Board of Directors prior to installation. The installed sound proofing must be installed by a licensed, professional contractor, and be inspected and approved by the Board's representative prior to installation of the hard flooring to ensure compliance with the sound proofing specifications set forth herein. The minimum sound proofing material that will be approved shall be of such kind and quality to achieve a Field Impact Insulation Classification (FIC) rating of at least 72. All hard surface flooring material must be installed at a distance of at least one-quarter (1/4) inch from the walls of the unit. At least seventy (70%) percent of all hard surface flooring in any Unit must be covered with area rugs.

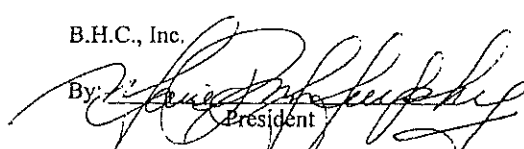
(Remainder of Article 9 Unchanged)

Dated: October 27, 2006

ATTEST:


  
Secretary

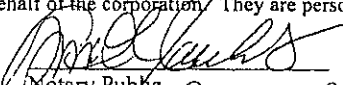
B.H.C., Inc.

By:   
President

State of Florida, County of Collier

The foregoing instrument was acknowledged before me this 27th day of October, 2006, by Marie Murphy, as President of the Beacon House Condominium Association, (B.H.C., Inc.) and Marge Pheasant, as Secretary of the Beacon House Condominium Association, (B.H.C., Inc.), a Florida corporation not for profit, on behalf of the corporation. They are personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA  
 Gina M. Paulidis  
Commission # DD405617  
Expires: MAR. 10, 2009  
Bonded Thru Atlantic Bonding Co., Inc.

  
Notary Public  
Printed Name Gina M. Paulidis  
Commission expires: 10-27-09  
(Seal) 3 10 2009

\*\*\* 3931724 OR: 4138 PG: 1039 \*\*\*

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
11/14/2006 at 12:42PM DWIGHT E. BROCK, CLERK  
REC FEE 10.00  
COPIES 1.00

Retn:  
BEACON HOUSE CONDO ASSOC  
12260 TANIAHI TRL E #102  
NAPLES FL 34113

## Certificate of Amendment

### COMBINED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

#### BEACON HOUSE TOWER ONE, A CONDOMINIUM AND BEACON HOUSE TOWER TWO, A CONDOMINIUM

The undersigned, being the duly elected and acting President and Secretary, respectively, of B.H.C., Inc. A Condominium Corporation, a Florida corporation not-for-profit, do hereby certify that a Special Meeting of the members held October 6, 2006, where a quorum was present, after due notice, the following resolution was approved and adopted by at least two-thirds of the voting interest which members present at such meeting or represented by proxy are entitled to cast, for the purpose of amending the Combined Amended and Restated Declaration Of Condominium, recorded in Official Records Book, 3012, Page 1817, Public Records of Collier County, Florida.

Underlined text is proposed addition:

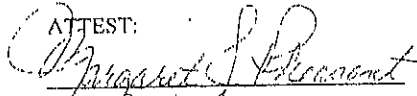
#### Article 14 - Use Restrictions

##### Section 5. No smoking

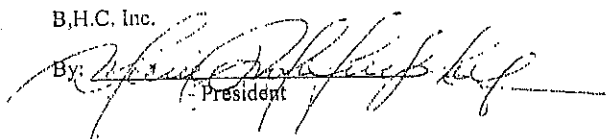
Smoking shall be prohibited on all common areas and in all condominium units. This prohibition shall apply to all present and future unit owners, visitors or other persons while on Beacon House property or in condominium units. Present unit owners who wish to be exempted from this amendment should apply in writing to the Board of Directors for consideration. The Board of Directors may designate areas suitable for smoking at their discretion.

Dated: October 27, 2006

ATTEST:


  
Secretary

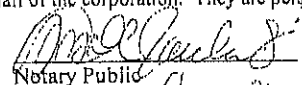
B.H.C., Inc.

By:   
President

State of Florida, County of Collier

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October, 2006, by Marie Murphy, as President of the Beacon House Condominium Association, (B.H.C., Inc.) and Marge Phasant, as Secretary of the Beacon House Condominium Association, (B.H.C., Inc.), a Florida corporation not for profit, on behalf of the corporation. They are personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA  
 Gina M. Paulidis  
Commission #DD405617  
Expires: MAR. 10, 2009  
Bonded by: State Bonding Co., Inc.

  
Notary Public  
Printed Name Gina M. Paulidis  
Commission expires: 10-27-07  
(Seal) 3-10-09

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
11/14/2006 at 12:42PM DWIGHT E. BROCK, CLERK

RBC FEE 10.00  
COPIES 1.00

Re: BEACON HOUSE CONDO ASSOC  
12260 TAMiami Trl E #102  
Naples FL 34113

## Certificate of Amendment

### COMBINED AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

#### BEACON HOUSE TOWER ONE, A CONDOMINIUM AND BEACON HOUSE TOWER TWO, A CONDOMINIUM

The undersigned, being the duly elected and acting President and Secretary, respectively, of B.H.C., Inc. A Condominium Corporation, a Florida corporation not-for-profit, do hereby certify that a Special Meeting of the members held December 20, 2005, where a quorum was present, after due notice, the following resolution was approved and adopted by at least two-thirds of the voting interest which members present at such meeting or represented by proxy are entitled to cast, for the purpose of amending the Combined Amended and Restated Declaration Of Condominium, recorded in Official Records Book, 3012, Page 1817, Public Records of Collier County, Florida.

Additions indicated by underlining.  
Deletions indicated by ~~striking through~~.

#### Article 9, Section 9.6

9. MAINTENANCE, ALTERATION AND IMPROVEMENTS. Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

(Sections 9.1 through 9.5 Unchanged)

9.6 Unit Floor Coverings. All units above the ground floor shall always have the floors covered with wall to wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms. New hard floor surfaces (tile, marble, wood, etc.) may only be installed in kitchens, bathrooms, balconies, foyers and utility or laundry rooms upon prior written approval of the Board of Directors, which shall condition its approval on the unit owner's proof of the installation of appropriate sound deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. All units above the ground floor may have floors covered with padding and wall to wall carpeting. However, hard surface floor materials, such as ceramic or vinyl tiles, marble, pergo or wood, may be applied to the floor surfaces of any portion of the unit if there is an approved form of sound deadening or sound insulation material placed between such flooring and the unfinished floor surface of the unit. Specifications for sound proofing and hard flooring must be approved in writing by the Board of Directors prior to installation. The installed sound proofing must be installed by a licensed, professional contractor, and be inspected and approved by the Board's representative prior to installation of the hard flooring to ensure compliance with the sound proofing specifications set forth herein. The minimum sound proofing material that will be approved shall be of such kind and quality to achieve a Field Impact Insulation Classification (FIIIC) rating of at least 72. All hard surface flooring material must be installed at a distance of at least one-quarter (1/4) inch from the walls of the unit. At least seventy (70%) percent of all hard surface flooring in any Unit must be covered with area rugs.

(Remainder of Article 9 Unchanged)

Dated: October 27, 2006

ATTEST:

*Marie Murphy*  
Secretary

B.H.C., Inc.

*Marie Murphy*  
President

State of Florida, County of Collier

The foregoing instrument was acknowledged before me this 27th day of October, 2006, by Marie Murphy, as President of the Beacon House Condominium Association, (B.H.C., Inc.) and Marge Pheasant, as Secretary of the Beacon House Condominium Association, (B.H.C., Inc.), a Florida corporation not for profit, on behalf of the corporation. They are personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA  
*Gina M. Paulidis*  
Commission # DD405617  
Expires: MAR. 10, 2009  
Bonded Thru Atlantic Bonding Co., Inc.

*Gina M. Paulidis*  
Notary Public  
Printed Name Gina M. Paulidis  
Commission expires: 10-31-09  
(Seal) 2-10-2009