

# DECLARATION OF CONDOMINIUM

FOR

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## SOUTH BEACH CONDOMINIUM

This DECLARATION OF CONDOMINIUM is made this 1<sup>st</sup> day of May, 2001, by **CENTEX HOMES**, a Nevada general partnership, whose address is c/o Centex Realty, Inc., 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida, 32216 ("Developer" or "Declarant"), in and by which the Developer makes the following declarations:

### 1. INTRODUCTION AND SUBMISSION.

1.1 **Submission Statement.** Developer, being the owner of the fee simple title to the property described in **Exhibit A** attached hereto, for itself, its successors, grantees and assigns, hereby submits to the condominium form of ownership and use the land described in **Exhibit A** hereof, the improvements now and hereafter situated thereon, and the easements and rights appurtenant thereto (the "Condominium Property"), pursuant to Chapter 718, Florida Statutes, 1999, as amended through the date hereof (the "Condominium Act"). The property description set forth on **Exhibit A** constitutes "Phase I" of the Condominium as the same is described in Article 15 hereof.

All the restrictions, reservations, covenants, conditions, easements and limitations of record contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, shall run perpetually unless terminated as provided herein, and shall be binding upon all Unit Owners as hereinafter defined. In consideration of receiving and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, the Articles of Incorporation and the Bylaws of the Association as hereinafter defined. Both the benefits provided and the burdens imposed shall run with each Unit and the interests in Common Elements as defined herein.

1.2 **Name.** The name by which the condominium is to be identified is South Beach Condominium, sometimes herein called the "Condominium." The street address is 3651 South Central Avenue, Flagler Beach, Florida 32136.

1.3 **The Land.** The land submitted to Condominium is located in Flagler County, Florida, and is described in **Exhibit A** attached hereto and made a part hereof, and consists of a parcel of real property (the "Land") upon which will be situated residential improvements (the "Condominium Building") and common facilities which are submitted hereby to condominium ownership. A survey and site plan of the Land is attached hereto and made a part hereof as **Exhibit C**.

### 2. DEFINITIONS.

2.1 **"Assessment"** means a proportionate share of the funds required for the payment of Common Expenses which from time to time is assessed directly each Unit Owner.

2.2 **"Articles"** mean the Articles of Incorporation of the Association, to be recorded in the County as they now exist and as they may be amended from time to time hereafter.

2.3 **"Special Assessment"** means any assessment levied against unit owners other than those assessments required by a budget adopted annually.

2.4 **"Association" or "Condominium Association"** means SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC., a not for profit Florida corporation, the entity responsible for the operation of the Condominium and such other Condominiums as are from time to time designated to be maintained or operated by the Association.

2.5 **"Board" or "Board of Directors"** means the Board of Directors of the Association pursuant to the Articles and Bylaws thereof or such other representative body responsible for administration of the Association.

2.6 **"Building" or "Condominium Building"** means the structure or structures situate on the Condominium property in which the Units are located, regardless of the number thereof.

2.7 **"Bylaws"** mean the Bylaws of the Association as they now exist and as they may be amended from time to time hereafter.

2.8 **"Common Elements"** means and includes:

2.8.1 The portions of the Condominium Property which are not included within the Units.

(a) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishings of utility and other services to Units and Common Elements.

(b) An easement of support in every portion of a Unit which contributes to the support of the Building.

(c) The property and installations required for the furnishings of utilities and other services to more than one Unit or to the Common Elements.

(d) Any other parts of the Condominium Property designated to Common Elements in this Declaration or any amendment thereto.

2.8.2 Common Elements shall not include improvements installed by Unit Owners.

2.9 **"Common Expenses"** means the expenses of administration, maintenance, operation, repair and replacement of the Condominium Property as well as any Association property and any other properties owned by the Association, other expenses declared by the Association or this Declaration to be Common Expenses and any other valid expenses or debts of the Condominium as a whole or the Association which are assessed against the Unit Owners and includes all expenses incurred by the Association for the benefit of the Condominium.

2.10 **"Common Surplus"** means the excess of all receipts of the Association collected on behalf of the condominium, including but not limited to, assessments, rents, profits and revenues on account of the Common Elements over the Common Expenses.

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2.11 **"Common Roads"** means those portions of the Common Elements that have been paved or otherwise improved for use as streets, roads or rights-of-way, and those streets, roads or rights-of-way not within the Common Elements over which the Association or the Owners have been granted easements for ingress and egress which are maintained by the Association.

2.12 **"The Community"** or **"The South Beach Community"** means all residential and recreational developments now existing on the Property or which may hereafter be developed and which will share in the use and enjoyment of and the expense of maintaining the Common Elements and Common Roads.

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

2.14 **"County"** means the County of Flagler, State of Florida.

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

2.16 **"Improvements"** means all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium property.

2.17 **"Lake(s)"** shall mean a body of water of considerable size, surrounded by land located on the Association Property, both natural and artificial, and if artificial, designed to hold water on a permanent basis.

2.18 **"Mortgagee"** means a bank, the Developer, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional type lender or its loan correspondent, or agency of the United States Government, which owns, holds or insures a mortgage encumbering a Condominium Parcel. "Mortgagee" also includes Federal National Mortgage Association.

2.19 **"Institutional Mortgagee"** means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA") and other similar insurers and guarantors of mortgages, mortgage banker, or any other lender generally reorganized as an institutional type lender or Developer holding a mortgage on a Unit or Units.

2.20 **"Limited Common Elements"** mean those Common Elements, the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to Common Elements shall also include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.21 **"Major Damage"** means wreckage, ruin or destruction of all or a substantial part of the Condominium Property such that the estimated cost of repair or replacement would exceed TWENTY THOUSAND and NO/100 (\$20,000.00) DOLLARS.

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2.22 **"Unit"** means a part of the Condominium property which is subject to exclusive ownership, as designated in the Declaration, which shall consist of land and/or improvements.

2.23 **"Unit Owner" or "Owner of a Unit"** means the owner of a Condominium Parcel as shown by the real estate records in the office of the Clerk of Flagler County, Florida, whether such Owner be the Developer, one or more persons, firms, associations, corporations or other legal entities. "Owner" shall not mean or refer to the holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

2.24 **"Utility Service"** as used in the Condominium Act, construed with reference to this Condominium, and as used in this Declaration, the Articles and the Bylaws shall include, but not be limited to, electric power, gas, water, trash and sewage disposal.

2.25 **"The Condominium" or "this Condominium"** means South Beach Condominium.

2.26 **"Voting Certificate"** means a document which designates one of the record title owners, or the corporate, partnership or entity representative who is authorized to vote on behalf of a condominium Unit owned by more than one Unit Owner or by any entity.

2.27 **"Voting Interest"** means the voting rights distributed to the Association members pursuant to Section 718.104(4)(i).

### 3. **DESCRIPTION OF CONDOMINIUM PROPERTY.**

3.1 **Number and Identification of Units.** Exhibit D attached hereto and made a part hereof includes a graphic description of the improvements comprising part of the Condominium Property. The improvements shall consist of twelve (12) condominium units located in one (1) three-story building. Each "Unit" is identified (as defined in the Condominium Act and herein) by number. A plot (site) plan of the improvements is annexed and made a part hereof as **Exhibit C**.

The construction of the improvements on the Land is not substantially complete; however, at the time the improvements or a portion thereof are substantially completed, the Developer shall cause this Declaration to be amended to include a Certificate of Surveyor authorized to practice in this state which shall provide that the construction of the improvements or certain Units to be conveyed are substantially complete so that the materials in **Exhibits A, C and D** together with the provisions of the Declaration describing the property or the planned Common Element facilities is an accurate representation of the location and dimensions of the improvements and that the identification, location and dimensions of the Common Elements and of each Unit to be conveyed can be determined from these materials.

3.2 **Other Improvements.** In addition to the Condominium Building situated thereon, the Land also includes improvements consisting of parking areas, walks, landscaped areas, as well

as all underground structures and improvements, which are not part of or located within the Condominium Building, such as wires, cables, drains, pipes, ducts, conduits, valves and fittings serving the Condominium to the extent the same are not elsewhere herein reserved to and/or retained by Developer.

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The Developer plans to construct as part of Phase II of the condominium, as a common element, a pool and cabana, each sized to accommodate approximately 15 persons. The Pool Area is planned to be approximately 765 square feet, the pool size will be approximately 40' by 26' in an irregular shape with a volume of 22,950 gallons and a maximum depth of 5' and a minimum depth of 3'. The pool will not be heated. The pool deck will be approximately 44' by 50' (outside dimensions) in a somewhat irregular shape. The planned cabana will have a mens' restroom/dressing room sized 8'5" by 6' and ladies' restroom/dressing room sized approximately 7'6" by 6' and a covered cabana sized 26' by 16' with open sides. Please refer to the Plot Plan and Phasing Plan attached to the Declaration, which includes a detail sketch of the proposed pool, deck and cabana area.

3.3 **Units.** The term "Units" as used herein shall mean and comprise the twelve (12) condominium units in the Condominium which are located and individually described in **Exhibit D** hereto.

3.3.1 Each condominium Unit shall include that part of the Condominium Building containing such Unit that lies within the following boundaries:

(a) **Upper and lower boundaries.** The upper and lower boundaries of a Unit shall be the boundary of the horizontal plane of the unfinished ceiling surface extended to an intersection with the perimetrical boundaries as an upper boundary and the boundary of the horizontal plane of the unfinished surface of the floor extended to an intersection with the perimetrical boundary as a lower boundary. For those Units which have a cathedral or other type of irregular ceiling, the space above the horizontal plane and below the underside of the finished surface of the vaulted ceiling is part of the Unit.

(b) **Perimetrical Boundary.** The perimetrical boundary of each Unit shall be the following boundaries of the exterior building walls which are the intersecting vertical planes adjacent to and which include the unfinished surface of the interior of the outside walls of the Condominium Building bounding a Unit and the interior building walls which are the vertical plane of the interior unfinished surface of the walls bounding a Unit (excluding interior partitions within Units) extended to intersections with other perimetrical boundaries, both as extended to an intersection with the upper and lower boundaries.

(c) **Exclusions.** The Unit Owner shall not be deemed to own any spaces or improvements lying beneath the unfinished inner surfaces of the perimeter walls and floors and above the lowest horizontal plane of the uppermost structural elements of each Unit, nor any spaces or improvements lying beneath the undercoated and/or unfinished inner surface of all interior columns, bearing walls and/or bearing partitions nor any pipes, ducts, vents wires, conduits or other facilities, equipment and/or fixtures running through any interior wall or horizontal or vertical portion of a Unit, for the furnishing of utility services, heating and cooling and/or ventilation to Units, Common Elements and/or Limited Common Elements.

(d) **Aperture.** All glass and other transparent and/or translucent material, insect screens and screening in windows and doors, the material covering other openings in the exterior on interior walls of Units where applicable, shall be construed to be within the boundaries or limits and part of the Unit exclusively served by such windows, doors and other openings.

(e) **Mechanical Equipment.** All air conditioning compressors, water heaters, heat pumps and other mechanical equipment serving only one Unit shall be deemed to be a part of the Unit, wherever the same may be located on the Land.

### 3.4 **Appurtenances and Possession and Enjoyment of Condominium Parcels.**

3.4.1 There shall pass with each Unit as appurtenances thereto:

(a) An undivided share in the Common Elements and Common Surplus, as more fully described in **Exhibit B** attached hereto and made a part hereof.

(b) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

(c) Membership of the Unit Owner in the Association, full voting rights in the Association and the right to use the Association Property and to access properties owned by the Association, subject to the rules and regulations as adopted from time to time by the Association.

(d) A non-exclusive easement for ingress and egress by the Owners, their guests, invitees and lessees over streets, walks, and other rights-of way serving the Units of the Condominium, necessary to provide reasonable access to the public ways.

(e) An exclusive easement for the use of such Limited Common Elements as may be designated in this Declaration or in the deed conveying the Unit.

3.4.2 Each Unit Owner is entitled to the exclusive possession of his Unit subject to the provisions of this Declaration. He shall be entitled to the use of the Common Elements, in accordance with the provisions of this Declaration and the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other Unit Owners. There shall be a joint use of the Common Elements and a mutual easement for that purpose is hereby created.

3.4.3 "Time share estates" may not be created in any Unit by any person or entity.

### 3.5 **Common Elements.**

3.5.1 **Inclusions.** The term "Common Elements", as used herein, shall mean and comprise all of the real property and improvements of the Condominium except Units, including without limitation:

(a) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements;

(b) easements of support in every portion of a Unit which contribute to the support of other Units and/or Common Elements;

(c) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation;

(d) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements;

(e) fixtures owned or held for the common use benefit and enjoyment of all owners of Units in the Condominium;

(f) easements for ingress and egress serving the Condominium property;

(g) all open areas and contained within the Land;

(h) all roadways, sidewalks, paths, fences and entrance areas located on the Land; and

(i) all other improvements owned or held for common use, benefit and enjoyment of all Unit Owners.

### 3.6 **Limited Common Elements.**

3.6.1 **Existence.** There may be Limited Common Elements appurtenant to Units in this Condominium, as reflected by the plot plan and survey attached as **Exhibit C** hereto. These Limited Common Elements are reserved for the use of the Units to which they are appurtenant or assigned to the exclusion of other Units, and there shall pass with a Unit as an appurtenance thereto the exclusive right to use the Limited Common Elements so appurtenant or assigned. These Limited Common Elements shall include, but not be limited to, the following as specifically designated and delineated by the plot plan and survey attached as **Exhibit C** hereto:

(a) To each Unit any enclosed patio areas and/or balconies that may be depicted on **Exhibit D**.

(b) To each Unit, the garage parking space bearing the same number as the Unit number, for example: Unit 1 shall have as appurtenant to it as a Limited Common Element the garage unit bearing the designation G-1, Unit 12 shall have appurtenant to it the garage unit bearing the designation G-12, all of which as shown on **Exhibit C**.

(c) Each Unit Owner of a Unit in the Condominium has the right of exclusive use of the air space and ground space occupied by the air conditioning compressor, heat pump, air handler and equipment and fixtures appurtenant thereto, serving that Unit.

(d) Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages his Unit together with his Limited Common Elements (whether or not fully assignable apart from the Unit), such Limited Common Elements shall not be assignable apart from the Unit to which they are appurtenant.

3.6.2 **Costs of Maintenance, Repair or Replacement.** Any expenses of maintenance, repair or replacement of Limited Common Elements shall be treated and paid for as a part of the Common Expenses (except that any maintenance, repairs or replacements caused by an individual Unit Owner shall be charged against the individual Unit Owner). Notwithstanding the foregoing, storage areas, patios and balconies, including any enclosure thereof, shall be maintained by an individual Unit Owner.

4. **APPURTENANCES TO UNITS.** There shall be appurtenant, and pass with title to each Unit, the rights, shares and interests provided by the Condominium Act which shall be deemed to include, without limitation the following:

4.1 **Use of Common Elements.**

4.1.1 An undivided share in the Common Elements in the amount set forth in **Exhibit B.**

4.1.2 The right to use exclusively those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere to a certain Unit or Units as Limited Common Elements.

4.1.3 An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time (as shown on **Exhibit C** hereto) and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time.

4.1.4 Non-exclusive easements, to be used and enjoyed in common by all present and future owners of Units in the Condominium, their guests and invitees, for use of those Common Elements or other facilities not designated elsewhere herein as Limited Common Elements, including without limitation easements for the furnishing and maintenance of utility services to all parts of the Land over, across, in and through the Land, buildings and other improvements, as the fixtures and equipment therefore now exist and/or may be modified or relocated.

4.1.5 An exclusive easement for the unintentional and non-negligent encroachment by any Unit, or upon any portion of the Common Elements, or vice versa for any reason not caused by or resulting from the willful negligent act of Developer or any Unit owner or owners, including construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachments as an easement appurtenant to the encroaching Unit or other improvements to the extent of such encroachment.

4.1.6 The Developer reserves the right, but not the obligation, to develop other condominiums and/or other residential developments upon lands adjacent to the Condominium property. In the event of such additional development, the Developer reserves the right to grant further non-exclusive easements over the common roads to property owners adjacent to the Land



described on **Exhibit A**. Developer shall grant such easements to such adjacent property owners, and such adjacent property owners shall enter into an agreement with the Association and shall covenant on behalf of themselves and their successors and assigns to pay a pro rata share of the maintenance and repairs for the common roads and to enter into an Agreement with the Association to set forth the method of computation of the respective contributions to the maintenance and repairs thereof.

#### 4.2 Easements.

4.2.1 An exclusive easement for the use of the air space occupied by the Units as it exists at any particular time (as shown on **Exhibit C** hereto) and as it may lawfully be altered or reconstructed from time to time, which easements shall be terminated automatically in any air space which is permanently vacated from time to time; and

4.2.2 Non-exclusive easements, to be used and enjoyed in common with the owners of all Units in the Condominium, their guests, invitees, and lessees, for use of those Common Elements not designated elsewhere herein as Limited Common Elements, including, without limitation, easements for:

(a) The furnishing and maintenance of private or public utility services to all parts of the real property of the Condominium over, across, in and through the Land, the Condominium Building and other improvements as the fixtures and equipment therefore now exist and/or may be modified or relocated;

(b) Vehicular and pedestrian access over, across, upon, in and through the drive, sidewalks, entries, gates, swales, grounds, and other portions if any of the Common Elements as are intended and/or provided for pedestrian and vehicular traffic through the Condominium and for access to the common roadways; and

(c) An exclusive easement for the use of the area of Land and air space occupied by the appurtenant mechanical equipment, e.g., air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, situated in and/or on Common Elements of the Condominium but exclusively serving a particular Unit, as the same exists in and on the Land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, provided that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

4.3 Membership. The right to membership in the Association upon the terms and conditions set forth elsewhere herein.

4.4 Ingress and Egress. Each Unit Owner and his guests, invitees, lessees and domestic help, and all delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of utilities authorized by the Developer or Grantor of the easement referenced therein ("Grantor") to serve the Condominium, holders of mortgage liens on the Condominium or any Unit and such other persons as the Developer may from time to time designate, shall have the non-exclusive and perpetual right of ingress and egress over and across the real property constituting common roads within the Community as described in **Exhibits A** and

C attached hereto and made a part hereof, or as they may be amended in related documents recorded in the public records of the County.

**4.5 Alterations of and improvements to Units and Common Elements.**

**4.5.1 Required Pre-approval.** Subject to the restrictions set forth in Section 8, no Unit Owner shall make any addition, alteration or improvements in or to his Unit, the Common Elements or Limited Common Elements and no fence, wall, gate or other structure or improvement may be erected, installed, maintained or removed on the Condominium Property until the design, construction, specifications and a plan showing the location of the structure have been approved in writing by the Board of Directors as to quality, design and materials, in harmony with existing structures, and as to location with respect to topography and finished grade elevation. Absent such approval of the Board of Directors, said request for approval shall be deemed denied. Nothing contained in this paragraph shall be construed to lessen the obligation of any Owner to make prompt application for and obtain all necessary governmental permits and other approvals with respect to any such structure. In no event shall a Unit Owner make any alterations in the portions of the improvements of the Condominium which are to be maintained by the Association, remove any portion thereof, make any additions thereto, do any work which would jeopardize the safety or soundness of the Building containing his Unit or impair any easement, or be in violation of the governing documents of the Community Association.

**4.5.2 Indemnification of Association and Unit Owners.** A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof, as may be required by the Association, including, without limitation, any costs, expenses or liability associated with the repair, replacement, removal or reinstallation of said additions, alterations or improvements regardless of the impetus, cause or reason for the same. The provisions of this paragraph shall not apply to the Developer.

**4.6 Restraint Upon Separation and Partition of Common and Limited Common Elements.**

**4.6.1** The undivided share in the Common and/or Limited Common Elements which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described.

**4.6.2** A share in the Common and/or Limited Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

**4.6.3** The shares in the Common and/or Limited Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common and/or Limited Common Elements shall lie.

5. **AMENDMENT OF DECLARATION.**

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5.1 **Procedure for Amending Declaration.** Except for amendments which Developer is authorized and/or obligated elsewhere herein to make and except as may be elsewhere herein or in the Condominium Act otherwise specifically provided, this Declaration may be amended only in the following manner:

5.1.1 **Required Vote of the Units.** This Declaration may be amended at any regular or special meeting of Unit Owners called or convened in accordance with the Bylaws by the affirmative vote of more than two-thirds (2/3) of the Units.

5.1.2 **Notice.** Notice of the subject matter of any proposed amendment to this Declaration shall be included in the notice of any meeting at which such proposed amendment is to be considered.

5.1.3 **Proposal.** Amendments to this Declaration may be proposed by the Board of Directors of the Association by resolution adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board or by the owners of one-tenth (1/10) of the Units, whether by vote of such owners as members of the Association at a special or regular meeting of the members or by written instrument signed by them.

5.1.4 **Adoption of Amendments.** Any amendment to this Declaration so proposed by the Board or members of the Association shall be transmitted to the President of the Association; or, in the absence of the president, to a Vice president or other acting chief executive officer, who shall thereupon call a special meeting of the Unit Owners in this Condominium to consider and vote upon such proposed amendment; provided, that a proposed amendment may be considered and voted upon at an annual meeting of the members of the Association if the next such meeting is to be held within the time hereafter limited and if notice of the proposed amendment shall be included in the notice of such meeting. The special or annual meeting as the case may be of the members shall be held not sooner than thirty (30) days nor later than sixty (60) days from the date of receipt by the Association of the proposed amendment. Notice of the meeting shall be in the form and shall be delivered and the meeting shall be called and held as provided for in the Bylaws of the Association; provided that any member may, in writing signed by such member, waive notice of any such meeting in the manner provided for in the Bylaws of the Association and such waiver, when delivered to the Secretary of the Association for filing in its records, whether before, during or after such meeting shall be construed to be the equivalent of giving notice to such member.

The proposed amendment may be adopted and shall become effective by and upon the affirmative vote at such meeting of owners of not less than two-thirds (2/3) of the Units provided that any amendment proposed may be adopted without a formal meeting of the members by an instrument executed and acknowledged with the formalities of a deed by members owning not less than eighty(80%) percent of all Units.

5.1.5 **Effective Date and Recording Evidence of Amendment.** An amendment, other than amendments made by the Developer alone pursuant to the Condominium Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data

identifying the Declaration and shall be executed in the form required for the execution of a deed. Amendments effected by the Developer must be evidenced in writing and recorded but a certificate of the Association is not required. An Amendment of the Declaration is effective when it is recorded in the public records of the County.

5.2 **Prohibited Amendments.** Except as otherwise provided in this Declaration, no amendment shall be passed which shall:

5.2.1 Subject to the provisions of Article 4 above, change the configuration or the size of any Unit in any material fashion, materially alter or modify the appurtenances to such Unit, nor change the proportional percentage by which a Unit Owner shares the Common Expenses and owns the Common Surplus unless the record owner thereof and all record owners of liens thereon shall join in the execution of such amendment and unless a majority of record owners of all Units approve the amendment.

5.2.2 Materially impair or prejudice the rights and priorities of any Mortgagee or otherwise violate a Federal National Mortgage Association or Federal Home Loan Mortgage Corporation requirement without the prior written consent of such Mortgagee. Mortgagee's consent shall not be unreasonably withheld.

5.2.3 In any way affect any of the rights, privileges, powers or options of the Developer without the prior written consent of the Developer.

5.2.4 Discriminate against any Unit Owner or against any Unit or class or group of Units comprising part of the Condominium property, unless the record owners of all affected Units and Institutional Mortgagees thereon shall join in the execution and acknowledgment of the amendment.

5.2.5 Make any change in Article 9 hereof entitled "Insurance," nor in Article 10 hereof, entitled "Reconstruction or Repair After Casualty" unless the Institutional Mortgagees on Units shall join in the execution and acknowledgment of the amendment.

5.2.6 Adversely affect the lien or priority of any previously recorded mortgage to a Mortgagee.

5.2.7 Change the rights and privileges of the Developer without the Developer's written approval.

5.2.8 Change the use of any Unit or Common Element to commercial use without Developer's written consent.

5.3 The right of the Developer to amend this Declaration of Condominium as elsewhere provided herein shall not be abridged in any manner by this Article or any other article of this Declaration or exhibits thereto.

5.4 The condominium regime may not be merged with a successor condominium regime without prior written approval of Institutional Mortgagees.

5.5 **Amendments by Developer.** Notwithstanding any provision to the contrary set forth in this Article or elsewhere in this Declaration or in the Articles of Incorporation or Bylaws of the Association, the Developer may amend this Declaration to add any surveyor's certificate(s) and/or to amend the documents as required by an Institutional Mortgagee without the consent or joinder of any Unit Owner or Institutional Mortgagee.

5.6 **Amendment to Correct Omission or Error in Condominium Documents.** The Association, by the affirmative vote of the Owners of not less than fifty-one (51%) percent of the members, may amend the Declaration for the purpose of correcting a defect, error or omission in this Declaration so long as such amendment does not materially or adversely affect the rights of owners, lienors or mortgagees.

## 6. **THE ASSOCIATION.**

6.1 **Name of Association.** The entity responsible for the operation of this Condominium shall be SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit (the "Association"), of which a copy of the Articles of Incorporation is attached hereto and made a part hereof as **Exhibit E**, subject to the rights reserved to Developer herein and in the Condominium Act to administer and manage the Condominium Property the Association shall administer and manage the Condominium Property provided that the Association may, to the extent permitted by the Condominium Act, by contract, delegate its maintenance, management and operational duties and obligations. The Association is also authorized to adopt and publish such reasonable rules and regulations as it deems reasonably necessary for the maintenance and conservation of the Condominium Property, and for the benefit of all Unit Owners. All Unit Owners shall be subject to such rules and regulations.

6.2 **Bylaws of Association.** A copy of the Bylaws of the Association is attached hereto and made a part hereof as **Exhibit F**. Defects or omissions in the Bylaws shall not affect the validity of the Condominium or title to the Condominium parcels.

6.3 **Voting Rights of Unit Owners.** The Unit Owner(s) shall become a member or members of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee title thereto from Developer or, in a conveyance by a grantee or a remote grantee of Developer, a deed which has been approved by the Association and otherwise complies with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws of the Association. There shall be appurtenant and pass with title to each Unit, one (1) vote as a member of the Association, which may be exercised by the Unit Owner(s), or the duly constituted proxy of the Unit Owner(s), from time to time, at all meetings of members and in connection with all matters upon which all members of the Association are entitled to vote. The qualification of members of and manner of admission to membership in the Association, the termination of such membership and voting by members shall be as provided for in the Articles of Incorporation and Bylaws of the Association.

7. **MAINTENANCE, REPAIRS AND REPLACEMENTS.** Responsibility for maintenance, repairs, and replacements of Condominium Property and property of Unit Owners located or situated within the Condominium shall be as follows:

7.1 **Units.** Each Unit, and the personal property therein, fixtures, equipment and appliances comprising a part thereof located therein or exclusively serving the same shall be maintained, kept in good repair and replaced by and at the expense of the Owner(s) thereof. All maintenance, repairs and/or replacements for which Unit Owners are responsible and obligated to perform, whether structural or non-structural, ordinary or extraordinary, shall be performed promptly as the need arises. Notwithstanding the obligation of Unit Owners for maintenance, repair and replacement of and in Units, the proceeds of all insurance awards or payments under insurance carried by the Association for loss or damage to or within such Units shall be applied against repairs and replacements to the extent that such award or payments exceed the deductible provisions of such insurance.

7.2 **Common Elements.** The Association shall be responsible for and shall assess against and collect from all Unit Owners, the costs of maintaining, repairing, replacing and keeping in clean and orderly condition all of the Common Elements except certain of the Limited Common Elements specified below. The Association shall, at the expense of all Unit Owners, repair any and all incidental damage to Units resulting from maintenance, repairs, and/or replacements of or to Common Elements.

7.3 **Limited Common Expenses.** The responsibility for and the cost of in orderly condition any patios, balconies, garage units or storage areas for Limited Common Elements which exclusively serve a certain Unit to the exclusion shall be borne by the Owner(s) of the Unit(s) to which the same are appurtenant.

Notwithstanding the Unit Owners' obligations with respect to certain Elements, any proceeds of insurance awards or payments under insurance Association for loss or damage to such Limited Common Elements shall be applied against such repair or replacement to the extent that such award or payments exceed the deductible limits of such insurance.

7.4 **Failure to Maintain.** In the event a Unit Owner fails to maintain his Unit and Limited Common Elements as required herein, or makes any alteration or additions without the required consent, or otherwise violates or threatens to violate the provisions of this Declaration relevant to maintenance, alteration and repair, the Association shall have the right to levy reasonable fines and/or administrative fees against the Unit Owner and the Unit for such necessary sums to remove any unauthorized addition or alteration and restore the property to good condition and repair.

No such fine or administrative fee will become a lien against the Unit. However, a fine or fee may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided that no such fine or fee shall in the aggregate exceed ONE THOUSAND and NO/100 (\$1,000.00) DOLLARS. The levying of the fine or fee shall be in accordance with the provisions of the Bylaws.

The Association shall have the further irrevocable right of access to each Unit during reasonable hours, when necessary for maintenance, repair or replacement of any common elements, limited common elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the common elements, limited common elements or to a Unit or Units and may exercise this right by allowing such access to Units by Association employees, or agents or any subcontractors appointed by them.

7.5 **Management.** The Board may enter into a contract with any firm, person or corporation or may join with another condominium association or entity in contracting for the maintenance and repair or management of the Condominium Property. The Board may contract for and may delegate to the contractor or manager all the powers and duties of the Association, except such as are specifically required by this Declaration or the Bylaws to have the approval of the Board or the membership of the Association. The contractor or manager may be authorized to determine the budget, make assessments for common expenses and collect assessments as provided by this Declaration, the Bylaws and Exhibits to this Declaration.

Each Unit Owner, his heirs, successors and assigns shall be bound by the Management Agreement for the purposes therein expressed, including without limitation:

7.5.1 Adopting, ratifying; confirming, and consenting to the execution of the Management Agreement by the Association.

7.5.2 Covenanting and promising to perform each and every covenant, promise and undertaking to be performed by the Unit Owners as provided in the Management Agreement.

7.5.3 Ratifying, confirming and approving each and every provision of the Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

7.5.4 Agreeing that the persons acting as directors and officers of the Association entering into such an agreement have not breached any of their duties or obligations to the Association.

7.6 **Entry for Maintenance.** The Association shall have the further irrevocable right of access to each Unit during reasonable hours, when necessary for maintenance, repair or replacement of any Common Elements, Limited Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements, Limited Common Elements or to a Unit or Units and may exercise this right by allowing such access to Units by Association employees, or agents or any subcontractors appointed by them.

The liability for any damage done by the Board, agents or employees of any management firm or the Association shall be the responsibility of the Unit Owner of the Unit being repaired, maintained or inspected unless such damage is created by the gross negligence or willful misconduct of the Board, agents or employees of any management firm or the Association.

8. **ALTERATIONS OF AND IMPROVEMENTS TO UNITS AND COMMON ELEMENTS.** Except as the right is herein reserved to Developer, neither a Unit Owner nor the Association shall make any alterations, improvements or additions to Units, Common Elements, or Limited Common Elements except in compliance with the following conditions: *Storm Shutter Specifications*

8.1 **Architectural Control.** It is the Developer's intent to create and maintain a subdivision in harmony with its surroundings and the natural elements of the land, and the Condominium homes have been designed to be compatible with the environment. No Unit Owner will make any change to the exterior appearance of his Unit.

8.2 No Unit Owner, shall make any addition, alteration or improvements to the Common Elements nor to any Limited Common Element.

8.3 Notwithstanding the above, a Unit Owner making or causing to be made any additions, alterations or improvement agrees, and shall be deemed to have agreed, for such person and his heirs, personal representatives, successors and assigns, to hold the Association, and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of the installation or construction thereof as may be required by the Association, subject to the Board's right to perform appropriate maintenance upon the failure of the Unit Owner to do so as provided in Section 7 above, including, without limitation, any costs, expenses or liability associated with the repair, replacement, removal or reinstallation of said additions, alterations or improvements regardless of the impetus, cause or reason for the same.

8.4 In connection with all reviews, acceptance, inspections, permissions, consents or required approvals by or from the Developer or the Association, neither the Developer nor the Association shall be liable to a Unit Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against a Unit Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer, or the Association. Approval of any plans does not in any way warrant that the improvements are structurally sound or in compliance with applicable codes, nor does it eliminate the need for approval from the Flagler County Building Department.

9. **INSURANCE.** Insurance shall be carried and kept in force at all times in accordance with the following provisions:

9.1 **Duty and Authority to Obtain.** The Association shall obtain fire and extended coverage insurance, vandalism and malicious mischief insurance insuring all of the insurable improvements within the Common Elements together with such other insurance as the Association deems necessary in a company with an "A+10" rating or better in an amount which shall be equal to the maximum insurable replacement value as determined annually.

The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force all of such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association, the Association Property, the Condominium Property, and the Unit Owners and their Mortgagees.

A certificate evidencing a Mortgagee endorsement shall be issued to the Mortgagee of each Unit.

The Owner(s) of each Unit may, at the expense of such Owner(s), obtain insurance coverage against damage to and loss of the contents of the Unit, personal liability for injury to and death of persons and damage to and loss of personal property of others, and against additional living expenses, provided that each policy of such insurance purchased by a Unit Owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other



policy covering the same property without rights of subrogation against other Unit Owners, the Association, and their respective employees, agents, guests, and invitees.

9.2 **Required Coverage.** The Association shall purchase and carry casualty insurance covering all of the buildings and the improvements of the Condominium in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs as determined annually by the Board of Directors of the Association, such insurance to include or afford protection against:

9.2.1 Loss or damage by fire or other hazards covered by standard extended coverage or other perils of endorsements;

9.2.2 Such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings and other improvements similar in construction, location, and use to the buildings and other improvements of the Condominium including, without limitation, vandalism, malicious mischief, windstorm, water damage, and war risk insurance if available;

9.2.3 Public liability insurance, in such amounts, with such coverage and in such forms as shall be required by the Board of Directors of the Association to protect the Association and the owners of all Units including without limitation hired automobile, non-owned automobile, off premises employee coverage, water damage and legal liability with cross-liability endorsements to cover liability of all Unit Owners as a group to each Unit Owner;

9.2.4 Workmen's Compensation insurance to meet the requirements of law; and

9.2.5 Loss or damage by flood, to the extent, if any, required or necessitated by law, including without limitation, the Flood Disaster Protection Act of 1973, or any similar law or regulation.

9.2.6 The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the terms "persons who control or disburse funds of the Association" includes but is not limited to those individuals authorized to sign checks and the president, secretary and treasurer of the Association. The Association shall bear the cost of bonding.

Except for the fidelity bonds that a management agent obtains for its personnel, the fidelity bond shall name the Association as an obligee and shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms of expressions.

9.3 **Optional Coverage.** The Association may purchase and carry such other insurance coverage, other than title insurance, as the Board of Directors of the Association in its sole discretion, may determine from time to time to be in the best interests of the Association and Unit Owners, including Directors' liability insurance coverage, or as an institutional Mortgagee may reasonably require while it holds a mortgage encumbering any Unit.

9.4 **Premiums.** Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums and other incidental expenses incurred by this Association in administering and carrying out the provisions of this Article shall be assessed against and collected from Unit Owners as Common Expenses.

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

9.6 **Assured.** The named insured shall be the Association, individually and as agent for the Unit Owners, without naming them, and as agent for their Mortgagees. All policies of insurance obtained and purchased by the Association shall be for the benefit of the Association, its members and their Mortgagees, as their interests may appear. All proceeds of insurance policies purchased by the Association shall be payable to the Association. The proceeds from insurance against any casualty loss shall be held for the use of the Association, its members and their respective Mortgagees, as their interests may appear, to be applied or distributed in the manner herein provided. The Association is hereby constituted and appointed agent for all Unit Owners, with authority to negotiate and settle the value and casualty insurance, and the Association is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

9.7 **Insurer.** All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association shall be bound by the Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Association.

9.8 **Application of Insurance Proceeds.** The proceeds of casualty insurance paid to the Association shall be applied and paid as follows:

9.8.1 **Damage to Common Elements Only.** The proceeds paid to the Association for loss of or damage to real property or improvements constituting Common Elements only shall be applied to the repair, replacement or reconstruction of such loss or damage. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Association to the owners of all Units, and their respective Mortgagees, as their interests may appear, in shares or proportions equal to the undivided interest appurtenant to each Unit in the Common Elements. If the insurance proceeds shall be insufficient to pay the cost of repair, replacement or reconstruction of such Common Elements, the Association shall pay the difference between the cost of repairing, replacing or reconstructing such loss or damage to the Common Elements and the amount of the proceeds from any Association Reserve Fund which may have been established. If no such Association Reserve Fund has been established or if any such Association Reserve Fund has been established and is insufficient to pay said difference, the Association shall assess the amount of the difference against, and collect it from, all Unit Owners as a Common Expense.

9.8.2 **Damage to Units.**

(a) **Association's Obligation.** The proceeds paid to the Association for loss of or damage to a building, constituting Common Elements and one or more Units thereof only, shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in such buildings which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements and Units, the excess shall be paid by the Association to the owners of the damaged or destroyed Units and their respective Mortgagees, as their interests may appear, in equal amounts. If the insurance proceeds shall be sufficient to pay for the repair, replacement or reconstruction of the Common Elements but shall be insufficient to pay the cost of repair, replacement or reconstruction of the damaged or destroyed Unit or Units in such building, the Owner(s) of the Unit(s) damaged or destroyed shall be liable for the cost of such repair, replacement or reconstruction, in the proportion that the amount of damage sustained to each such Unit bears to the total deficit, upon payment by each such Unit Owner of their proportionate share of the cost of repairing, replacing or reconstructing the damaged Units, said funds shall be applied toward the total cost of repairing, replacing or reconstructing all of such damaged or destroyed Units. If the insurance proceeds shall be insufficient to pay the cost of repairs, replacements or reconstruction of the Common Elements, the difference between the total cost of repairing, replacing or reconstructing the Common Elements and the amount of the insurance proceeds shall be assessed by the Association against, and collected from, all Unit Owners, as a Common Expense. If and when insurance proceeds are paid to the Association for any casualty loss, the holder(s) of any mortgage or mortgages encumbering a Unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or insurance proceeds to the reduction of indebtedness secured by such mortgage(s), unless the insurance proceeds represent a distribution to the Owner(s) of the Unit and the Mortgagee(s) thereof, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the Owner(s) of the Unit, and the Mortgagee(s) thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

(b) **Unit Owner's Obligation.** Each Unit Owner shall have the obligation to purchase public liability insurance to protect himself against claims due to accidents within his Unit, and casualty insurance on the contents within said Unit. In addition, he should review the coverage of the Association to determine any additional insurance that may be advisable for him to purchase.

10. **RECONSTRUCTION OR REPAIR AFTER CASUALTY.** Whether, and the manner in which, any or all of the Condominium Property which shall be damaged or destroyed by casualty shall be repaired, reconstructed or replaced shall be determined as follows:

10.1 **Residential Building.** If the Residential Building shall be damaged or destroyed, repair or reconstruction thereof, or termination of the Condominium, shall be in accordance with the following:

10.1.1 **Total Destruction of the Residential Building.** If the Residential Building of the Condominium is totally destroyed or is so damaged that no Unit therein is habitable, neither the Building nor any of the improvements comprising Common Elements shall be reconstructed and the Condominium shall be terminated unless seventy-five(75%) percent of the owners of Units

agree in writing, within sixty (60) days after the date of such destruction to reconstruct the same and/or unless any policy or policies of casualty insurance covering the same shall require reconstruction thereof as a condition precedent to the payment of proceeds thereunder, and in either case as long as the then-applicable zoning and other regulatory laws and ordinances shall allow the same to be reconstructed.

10.1.2 **Damage to the Building.** If the Residential Building is wholly or partially damaged and a majority of the Units in the building remain habitable, the damaged or destroyed Common Elements and/or Units shall be repaired or reconstructed so that the building and/or Units shall be restored to substantially the same condition as existed at the time the Unit was initially conveyed, unless within sixty (60) days after the casualty is determined by agreement in the manner elsewhere herein provided that the Condominium shall be terminated.

10.2 **Common Elements.** Damaged or destroyed improvements constituting part of the Common Elements shall be repaired, reconstructed and/or replaced unless, in the event of total destruction of the Units or by agreement after partial destruction, the Condominium shall be terminated.

10.2.1 **Plans and Specifications.** Repair or reconstruction of Condominium Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed, provided that the Board of Directors of the Association may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable.

10.2.2 **Responsibility.** If the damage or destruction shall be limited only to one or more Units for which the responsibility of maintenance, repair and replacement is that of the affected Unit Owner(s), then such Unit Owner shall be responsible for carrying out the repair or reconstruction thereof. In all other instances of damage or destruction, the Association shall be responsible for carrying out the repair and reconstruction thereof.

10.2.3 **Construction Funds.** All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Association from Unit Owners, shall be disbursed toward payment of such costs in the following manner:

(a) **Unit Owner.** The portion of insurance proceeds representing damage for which the responsibility of repair and reconstruction is upon one or more but less than all Unit Owners shall be paid by the Association to the affected Unit Owners and if any of such Units are mortgaged, to the Unit Owners and their Mortgagees jointly.

(b) **Association - Under \$20,000.00.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than TWENTY THOUSAND and NO/100(\$20,000.00) DOLLARS, then the Construction Fund shall be disbursed in payment of such costs upon the order of the Association.

(c) **Association - Over \$20,000.00.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than TWENTY THOUSAND and NO/100(\$20,000.00) DOLLARS, then the Construction Fund shall be disbursed

in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect registered to practice in Florida.

(d) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in the Construction Fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere herein stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessment paid by such owner into the Construction Fund shall not be made payable to any Mortgagee.

11. **EQUITABLE RELIEF.** In the event of "major damage" to or destruction of all or a substantial part of the Condominium Property and if the Property is not repaired, reconstructed or rebuilt within a reasonable period of time, any Unit Owner shall have the right to petition a court of competent jurisdiction for equitable relief which may, but need not, include termination of the Condominium and partition.

12. **LIMITATION OF LIABILITY.**

12.1 The liability of each Unit Owner for Common Expenses shall be limited to the amounts assessed against him from time to time in accordance with the Condominium Act, this Declaration, the Articles and the Bylaws.

12.2 A Unit Owner may be personally liable for any damages caused by the Association in connection with the use of the Common Elements, but only to the extent of his pro rata share of that liability in the same percentage as his interest in the Common Elements and in no event shall said liability exceed the value of his Unit. Each Unit Owner shall be liable for injuries or damages resulting from an accident in his own Unit to the same extent and degree that the owner of a house or any other property owner would be liable for such an occurrence.

12.3 In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners, and they shall have a right to intervene and defend.

13. **USE RESTRICTIONS.** In order to provide for congenial occupancy of the Condominium Property and for the protection of the value of the Units, the use of the Condominium Property shall be in accordance with the following provisions, so long as the Condominium exists:

13.1 **Units.** Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility, notwithstanding the foregoing:

13.1.1 an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making

professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions;

13.1.2 it shall be permissible for the Developer to maintain, during the period of its sale or rental of Units, one or more Units as sales and rental models and offices, and for storage and maintenance purposes; and

13.1.3 one or more Units may be maintained for the use of the Association in fulfilling its responsibilities. Nothing herein shall be construed to prohibit leasing of the Units, provided that such leases are in compliance with Paragraph 14.11 hereof.

13.2 **Insurance.** No use shall be made of any Unit or of the Common Elements or Limited Common elements which will increase the rate of insurance upon the Condominium Property without the prior consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in cancellation of insurance on any Unit or part of the Common Elements, or which will be in violation of any law. No waste shall be committed in the Common Elements.

13.3 **Signs.** No sign of any kind shall be displayed to public view on or from any Unit or the Common Elements without the prior written consent of the Board.

13.4 **Pets.** No animals of any kind other than four-footed pets, aquarium fish or small birds such as canaries and parakeets shall be kept in a Unit or allowed upon the Condominium Property except by prior written consent of the Board. Such consent, if given, shall be revocable by the Board at any time and shall automatically expire upon the death or other disposition of the pet. Pets shall be leashed or restrained at all times when on or about the Condominium Property. Unit Owners maintaining pets on the Condominium Property or whose guests, lessees or invitees bring any animal upon the Condominium Property shall be responsible for, and bear the expense of, any damage to person or property resulting therefrom. Any such damage shall be determined by the Board and collected by the Association. The Board of Directors is authorized from time to time to make such rules restricting or permitting pets on the Condominium Property, including, without limitation, the number, type, size and/or weight of such pets, requirements that all animals be leashed and that all animal waste be properly disposed of.

13.5 **Parking.** A minimum of one (1) parking space per dwelling unit shall be provided. Trailers, boats, campers, trucks other than standard size pick-up trucks, and all vehicles requiring more than one (1) standard sized parking space may not be parked on the Property unless specifically permitted by the Developer or the Association.

13.6 **Encroachments.** None of the rights and obligations of the Unit Owners created herein or by the deed conveying the Condominium shall be altered in any way by encroachment due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of any such encroachments as long as they shall exist; provided however, that in no event shall a valid easement for encroachment be created in favor of Unit Owner(s), if encroachment occurred due to the willful conduct of the Unit Owner(s).

13.7 **Common Elements.** The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities

for the enjoyment of the Units. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in or removed from the Common Elements or Limited Common Elements without the prior written consent of the Association.

13.8. **Nuisances.** No noxious or offensive activity shall be allowed upon the Condominium property, nor any use or practice which is the source of annoyance or nuisance to Unit Owners or guests or which interferes with the peaceful possession and proper use of the Condominium Property by residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist.

13.9. **Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made of the Condominium Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be the same as is elsewhere herein specified.

13.10. **Leasing.** All tenants must specifically assume and agree to abide by the terms and conditions of the Declaration of Condominium. After termination of the Developer's right to control the Board of Directors, the Owners may adopt different leasing regulations upon the approval of Owners owning at least two-thirds (2/3) of the Units. Any noncompliance with the terms and conditions of the Declaration of Condominium, Bylaws, Articles and/or other promulgated rules and regulations by such lessee shall be the responsibility of the Unit Owner.

13.11. **Exterior Improvements/Landscaping.** No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls doors or windows of the building (including but not limited to awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery flower, tree, vine, grass or other plant life outside his Unit without the prior written consent of the Association, subject always to the provisions hereof. All window coverings shall be lined or otherwise made so that they appear from the exterior to be white or off-white.

13.12. **Regulations.** Reasonable regulations and rules concerning the use of the Condominium Property may be promulgated, modified or amended from time to time by the Board. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium.

The Association shall have the right to enforce all the restrictions set forth in this Article and the Declaration in any manner it deems necessary including without limitation, injunctions, suit for damages, or fines.

14. **RESERVED RIGHTS OF DEVELOPER.** In addition to various rights reserved by the Developer elsewhere provided in this Declaration, the Developer reserves the following rights:

14.1. **Developer's Use of Units.** Until Developer has completed and conveyed all the Units, neither the Unit Owners nor the Association shall interfere with the completion of the proposed improvements and the sale of the Units. Developer may make such use of the unsold Units and

common areas as may facilitate such completion and sale, including, but not limited to maintenance of a sales office, the showing of the Unit, and the display of signs.

#### 14.2 **Easement Rights of Developer.**

14.2.1 **Roads.** Developer hereby reserves for itself and its designees an easement over the Condominium Property as may be necessary for preserving, maintaining or improving the Condominium property.

(a) **Developer's Easement to Correct Drainage.** For a period of five (5) years from the date of conveyance of the first Unit, the Developer reserves for itself and its designees an easement and right on, over and under the ground within the Condominium Property to maintain and to correct drainage of surface water and other erosion controls in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil or to take any other similar action reasonably necessary following which the Developer shall restore the affected Condominium property to its original condition as nearly as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice. The rights granted hereunder may be exercised at the sole option of the Developer and shall not be construed to obligate Developer to take any affirmative action in connection therewith.

(b) **Construction Easement.** Developer reserves for itself, its nominees, designees, successors and assignees, an easement over and across the Condominium Property as may be reasonably necessary in connection with the construction of improvements within the South Beach Community. Such easement shall include, but not be limited in connection with such construction activity, together with the usual and common noise level created by such construction activity.

(c) **Cable Television.** The Developer hereby reserves the right to install or to contract for the installation of cable television within the Condominium Property.

14.3 **Right to Amend.** Prior to turnover, the Developer, so long as it owns Units to which more than twenty-five(25%) percent of the Common Elements are appurtenant, reserves the right at any time to amend the Declaration as may be required by a lending institution or public body or title insurance company. Any such amendment need only be executed and acknowledged by the Developer and shall not require the joinder or consent of any other Unit Owner or mortgagee of any Unit. In addition, the Developer reserves the right to amend the Declaration as provided in Section 5 hereof.

14.4 **Rights of Developer to Sell or Lease Units.** So long as Developer or any mortgagee succeeding Developer in title shall own any Unit, it shall have the absolute right to sell any such Unit to any person, firm or corporation upon any terms and conditions as it shall deem to be in its own best interests. In addition, the Developer shall have the right to maintain a sales office or model unit on the Condominium Property for so long as it owns one Unit in the Condominium.

14.5 **Right of Access for Inspection/Maintenance and Repairs.** Notwithstanding anything contained in this Declaration to the contrary, for a period of ten (10) years following the



recording of this Declaration, the Developer hereby reserves for its own benefit and the benefit of its successors and assigns an irrevocable, non-exclusive easement in and to all of the Condominium Property for the following purposes and on the following terms and conditions:

14.5.1 Absent emergency or exigent circumstances requiring immediate access to any portion of the Condominium Property, exercise of such right of access shall be preceded by reasonable advance notice to the Association.

14.5.2 Pursuant to the exercise of the access rights granted herein, Developer may inspect the wearing, maintenance, condition or weathering of the Condominium Property or any portion thereof.

14.5.3 Pursuant to the exercise of the access rights granted herein, Developer may (but shall in no way be obligated to do so pursuant to the provisions of this paragraph 14.5 or otherwise except as required by law to the contrary) elect to perform, at Developer's sole cost and expense (or as otherwise agreed between the Developer and the Association or affected Unit Owners) cure or correct any wearing, condition or weathering of the Condominium Property or any portion thereof.

14.5.4 All persons performing inspections or work in and about the Condominium Property for and on behalf of Developer shall take reasonable precautions to minimize interference with the enjoyment, use and occupancy of the Condominium Property by the Unit Owners and other easement beneficiaries.

14.5.5 In the event Developer elects to exercise the right of access set forth herein, Developer may (but shall in no way be obligated to do so) provide to the Association recommendations as to the maintenance, care, and/or control of the Condominium Property or any portion thereof.

14.5.6 Developer hereby agrees to defend, indemnify and hold the Association harmless against any claims, costs, damages, or liability arising out of Developer's inspection of the Condominium Property, including costs and reasonable attorney's fees at both trial and appellate levels. Developer hereby agrees to defend, indemnify and hold the Association harmless from and against all liens on the Condominium Property filed by contractors, materialmen, or laborers performing work and tests for Developer, except to the extent the same are consented to by the Association in advance.

14.5.7 Nothing herein shall be deemed to impose any obligation of inspection upon the Developer, its successors or assigns, nor shall the provisions of this paragraph 14.5 give rise to any rights or remedies in favor of the Association or any Unit Owner except the right to indemnity expressly set forth herein.

14.6 **Waterway Rights.** With respect to any waterways now existing or which may hereafter be contained within or adjoining the Property, only the Declarant or the Association shall have the right to pump or otherwise remove any water from such waterways for the purposes of irrigation or other use or to place any matter or object in such waterways. No docks, moorings, bulkheads, pilings, boat shelters or other structure shall be erected on or over the waterways, except as may be erected by the Declarant or the Association as the case may be. Canoes, non-

combustion powered boats, sailboats, personal watercrafts (jet skis), gas and diesel driven boats shall be permitted only as designated by the Association. Unit Owners are granted the right to reasonable use and benefit of the waterways now existing or which may hereafter be contained within or adjoin the Property, subject to governing law and the right of Association to adopt reasonable Regulations from time to time in connection with the use of the waterways by members of the Association and subject to the Declarant's reserved right to ingress and egress over the waterways. The ingress and egress to the waterways shall be solely at designated access points. The Declarant or the Association as the case may be shall have the right to deny such use to any person who in the opinion of Declarant or the Association may create or participate in a disturbance or nuisance on any part of the waterways. The right to reasonable use and benefit of the waterways may be subject to riparian rights of others and may be further granted to such other Persons, as may be designated by Declarant from time to time.

14.7 **Ingress and Egress Maintenance Easement.** Declarant hereby reserves an easement for itself and/or the Association across the Condominium Property and all waterways for ingress and egress for the reasonable maintenance and care of any portion of the waterways or their embankments. In light of the meandering nature of shorelines and the constant changes incident to water levels, the Developer does not warrant that the property lines along waterways and other bodies of water will be identical to those depicted on any survey of the Property, at any one time.

14.8 **Additional Easements Reserved.** The real property submitted to condominium ownership herewith is subject to the covenants, conditions, limitations, restriction, reservation, all matters of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates. The Developer shall have the right to grant such easements over and upon the Condominium Property and designate the beneficiary thereof until seven (7) years after recording of this Declaration or until such time as Developer transfers control of the Association to the Unit Owners, whichever shall first occur. Thereafter, the Association shall be empowered to grant such easements on behalf of its members. During the period of time that Developer has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. The right to grant the foregoing easements shall be subject to the requirement that the easements not structurally weaken the Condominium building(s) and improvements upon the Condominium Property by Unit Owners.

15. **PHASED DEVELOPMENT.** The Declarant reserves the right, but shall not have the obligation, to develop in one or more additional phases and hereafter to submit to the condominium form of ownership under the terms and conditions of this Declaration and the Condominium Act, the real property more particularly described in **Exhibit I**, or any undivided interest therein (the "Future Phase Lands"). Any portions of the Future Phase Lands submitted to the condominium form of ownership is herein identified as a "Future Phase". Declarant reserves the right without the consent of any person or entity to make non-material changes in the legal description of the Future Phase Lands, or any portion thereof and to amend the provisions of this paragraph and the Phase Plan attached hereto as **Exhibit J**, provided that the amendments are consistent with the provisions of Section 718.403(6) of the Condominium Act, as amended from time to time.

15.1 **Limitations on Phasing.** Declarant shall not subdivide the Future Phase Lands into more than two (2) Future Phases. Each Future Phase shall not contain more than two (2) nor less than one (1) building. Each building constructed in a Future Phase shall contain not less than twelve (12) nor more than fifteen (15) Condominium Units. Each Unit in any Future Phase shall have not less than one (1) bedroom and not more than four (4) bedrooms. Each Unit in any Future Phase shall have not less than one (1) bathroom and not more than four (4) bathrooms. Each Unit in any Future Phase shall have not less than seven hundred (700) square feet of living space (excluding balcony or patio areas) and not more than eighteen hundred (1800) square feet of living space (excluding balcony or patio areas). The maximum number of Condominium Units which may be constructed and incorporated into this Condominium is forty-four (44). Notwithstanding the foregoing to the contrary, it is Developer's current intent to construct no more than forty-two (42) Condominium Units in this Condominium.

15.2 **Timeshare Estates in Future Phases.** Timeshare estates shall not be created with respect to Units in any phase of the Condominium.

15.3 **Procedure.** Future Phases shall become part of this Condominium upon the election of the Declarant and the recordation of an amendment to this Declaration, to be executed only by Declarant, extending the terms and conditions of this Declaration to such Future Phase (a "Phase Amendment"). A Phase Amendment shall identify the portion(s) of the Future Phase Lands being submitted to the terms and conditions of this Declaration thereby and shall identify the number of buildings and the units contained in each to be located thereon.

15.4 **Description.** A plot plan and survey showing the approximate location of the improvements to be located on the Future Phase are also set forth in **Exhibit J**. Buildings and Units added as part of Future Phases may differ from those constructed as a part of Phase One in design features, unit sizes and unit types; provided however that the unit sizes are subject to the provisions of paragraph 15.1 above and provided also that the exterior elevation of such buildings shall be substantially consistent with the exterior elevation of the buildings constructed in Phase One.

15.5 **Impact.** The impact of the completion of Future Phase upon the Condominium initially created by this Declaration ("Phase One") will be to cause an undivided interest in those portions of the Future Phase Lands not contained within Condominium Units, to be owned jointly by the Owners of this Condominium (including the Owners of the Condominium Units created as part of such Future Phase) as Common Elements and/or Limited Common Elements in the same manner as the Common Elements and Limited Common Elements constructed as a part of Phase One. Additionally, the Owners of Units constructed as part of a Future Phase will have the same rights and interests in and to the Common Elements and/or Limited Common Elements constructed as a portion of Phase One as Owners of Units in Phase One.

15.6 The addition of Future Phases will: (a) increase the members of the Association and accordingly affect the voting rights of the members in the Association; (b) increase the number of Units in the Condominium or the number of Units using the Common Elements; (c) alter an Owner's fractional undivided share of the Common Elements or Common Expenses in the manner described in **Exhibit J**.

15.7 **Undivided Share of Common Elements, Common Expenses and Common Surplus.** The undivided share of Common Elements, Common Expenses and Common Surplus of the Units as set forth in **Exhibit B** will change as a result of the addition of Future Phase(s) in the manner described in **Exhibit J**.

15.8 **Addition of Phases.** Declarant's right to unilaterally add Future Phases to this Condominium expires seven (7) years from the date of recording of this Declaration.

15.9 **No Encumbrance.** The provisions of this Declaration shall not constitute an encumbrance on or grant to the Association or a Unit Owner or any other party of any right, claim or interest in the Future Phase Lands or any portion thereof until and unless a Phase Amendment is executed and recorded by Declarant adding such portion(s) of the Future Phase Lands to this Condominium in accordance with the terms and conditions of this Declaration, and then only to the extent of the Lands described therein.

15.10 **Recreational Facilities and Areas.** Declarant does not plan to provide any additional recreational areas and facilities if any Future Phase(s) is added.

16. **COMPLIANCE AND DEFAULT.** Each Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act and/or the governing documents of said entity:

16.1 **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests employees, agents, lessees or other invitees but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

16.2 **Compliance.** In the event a Unit Owner or occupant fails to maintain a Unit or the Limited Common Elements appurtenant to the Unit, or fails to cause such Unit or Limited Common Elements to be maintained or fails to observe and perform all applicable provisions of the Declaration, the Bylaws the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required by said entity, the Association shall have the right to proceed in court of equity to require performance and/or compliance, to sue in a court of law for damages, to collect from the Unit Owner and the Unit the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to enforce collection by judgment, lien and/or any other manner permitted by law. The Association shall have the further irrevocable right of access to each Unit during reasonable hours, when necessary for maintenance, repair or replacement of any Common Elements, Limited Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or as necessary to prevent damage to the Common Elements, Limited Common Elements or to a Unit or Units and may exercise this right by allowing such access to Units by Association employees, or agents or any subcontractors appointed by them.

In addition to or instead of the above, the Association shall have the right to levy fines against Unit Owners for any violation of the Declaration, Bylaws and/or rules or regulations established by the Association. Any reference to a fine contained in this Declaration shall not be construed as a limitation; fines may be imposed for the violation of any provision herein.

16.2.1 Prior to the levying of such a fine, the Unit Owner and, if applicable, any licensee or invitee must be given reasonable notice of at least fourteen (14) days and an opportunity for hearing. The notice shall include: (a) a statement of the date, time and place of the hearing; (b) a statement of the provisions of the Declaration, Association By-Laws, or Association Rules which have allegedly been violated; and (c) a short and plain statement of the matters asserted by the Association.

16.2.2 A party against whom the Association seeks to levy a fine is entitled to a hearing held before a committee of other Unit Owners. Said party shall have the 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. If the committee of other Unit Owners does not agree with the fine, it shall not be levied.

16.3 **Costs and Attorney's Fees.** In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, the Articles of Incorporation and Bylaws of the Association, or any and all regulations applicable to such Owner as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.

16.4 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws of the Association, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

17. **ASSESSMENTS: LIABILITY AND DETERMINATION.** To provide the funds necessary for proper operation and management of the Condominium, the Association has been granted the right to make, levy and collect assessments against all Unit Owners and Units. The following provisions shall govern the making, levying and collecting of such assessments and the payment of the costs and expenses of operating and managing the Condominium by the Association. Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees as set forth in the Condominium Act.

17.1 **Common Expenses and Common Surplus.**

17.1.1 Common Expenses shall include the expenses of the operation, maintenance, repair or replacement of the Common Elements, costs of carrying out the powers and duties of the Association, costs of maintaining any facilities and property owned by the Association, and any other expense designated as Common Expenses by the Condominium Act, this Declaration or the Bylaws. The cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a Common Expense.

17.1.2 Common Expenses shall be assessed against Unit Owners in accordance with the percentage set forth for such Unit Type in **Exhibit B** attached hereto and made a part hereof.

17.1.3 Common Surplus, if any, shall be owned by Unit Owners in accordance with the percentage set forth for such Unit Type in **Exhibit B** attached hereto and made a part hereof.

17.2 **Liability for Assessments.**

17.2.1 **Authority to Impose.** The Association, through its Board of Directors, shall have the power to determine and fix the sums necessary to provide for the Common Expenses, including the expense allocable to services being rendered by a management company with whom the Association may contract. The annual Assessment shall initially be payable monthly in advance; however, the Board of Directors shall have the power to establish other collection procedures. In addition, the Board of Directors shall have the power to levy Special Assessments against Units in their respective percentages if a deficit should develop in the payment of Common Expenses during any period that the level of Assessments has not been guaranteed by the Developer. The Board of Directors of the Association may include sums to establish reasonable reserves against future contingencies in each annual Assessment which reserves may be waived or reduced upon the approval of a majority of the total voting interests voting in person or by limited proxy at a duly called meeting of the Association.

17.2.2 **Persons and Entities Liable.** A Unit Owner, regardless of the manner in which he acquired title to his Unit including, without limitation, a purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments while he is the owner of a Unit. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner.

The liability for prior Assessments of first mortgagees or their successors or assignees who acquire title to a Unit by foreclosure or deed in lieu of foreclosure shall be limited to the lesser of (a) one(1%) percent of the original mortgage debt or (b) the Unit's unpaid common expenses and Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association. The limitations for prior Assessments imposed by this section shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. The person acquiring title shall pay the amount owed to the Association within thirty (30) days of the transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Unit and proceed in the same manner as provided in this section for the collection of unpaid Assessments.

The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements, services or recreation facilities, or by abandonment of the Unit against which the Assessment was made. The Association may charge an administrative late fee, in addition to interest, on the late Assessment payments not to exceed the maximum amount permitted under the Condominium Act. Any unpaid share of Common Expenses or Assessments for which a first mortgage mortgagee is relieved from liability under the provisions of this Declaration shall be deemed to be a Common Expense, collectible from all Unit Owners, including such acquirer, his successors and assigns. A first mortgage mortgagee may not, during the period of its ownership

of such Parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

The Owner(s) of each Unit shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all assessments, regular or special fines on such delinquent assessments or installments thereof as above provided and for all costs of collecting the assessments and interest thereon, including a reasonable attorney's fee, whether suit be brought or not, levied or otherwise coming due while such person(s) or entity own(s) a Unit.

No Owner of a Unit may exempt himself from liability for any assessment levied against such Owner and his Unit by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit, or in any other manner.

#### 17.2.3 Exceptions to Liability for Assessments.

(a) The Association. Should the Association become the Owner of any Unit(s), the assessment which would otherwise be due and payable to the Association by the Owner(s) of such Unit(s), reduced by an amount of income which may be derived from the leasing of such Unit(s) by the Association, shall be apportioned and the assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests in the Common Elements, exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

(b) The Developer. Upon conveyance of the first Unit to a non-developer purchaser, the Developer shall not be obligated to pay the share of Common Expenses and Assessments attributable to Units it owns until the earlier of the date control of the Association is turned over to the Unit Owners other than the Developer or June 1, 2001 (the "Guarantee Expiration Date"); provided however, that the Assessments for the Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over the amount of the Two Hundred Seventy Eight and 90/100 Dollars (\$278.90). The Developer shall be obligated to pay any amount of Common Expenses incurred during such period and not produced by the Assessments at the guaranteed level receivable from other Unit Owners. After the Guarantee Expiration Date, the Developer shall be obligated to pay the share of Common Expenses and Assessments attributable to the Units it is then offering for sale or Developer may, in its sole discretion, extend the Guarantee Expiration Date for up to two (2) additional one (1) year periods provided that the Assessments levied against the Units other than the Developer do not increase, except as may be required directly as a result in increases in the annual assessment due to Community Association.

The Developer has elected to collect and fund the reserves. Upon transfer of control of the Association to the non-developer Unit Owners, the reserves may only be waived or reduced by a majority vote at a duly called meeting of the Association. Waiver or reduction of the reserves by the non-developer Unit Owners in this manner may adversely impact upon the Project's continued financing eligibility under the Federal National Mortgage Association ("FANNIE MAE").

17.3 **Time for Payment.** Unless otherwise determined by the Board, the assessment levied against the Owner of each Unit and his Unit shall be payable monthly on the first day of each month beginning at the time of conveyance of the Unit to a third party. The Association shall not require assessments to be paid less frequently than monthly.

17.4 **Annual Budget.** The Board shall establish an Annual Budget in advance for each fiscal year which shall estimate all expenses for the forthcoming fiscal year required for the proper operation, management and maintenance of the Condominium, including, when deemed necessary or advisable by the Board, a reasonable allowance for contingencies and reserves.

17.5 **Reserve Fund.** The Board, in establishing each Annual Budget, shall include therein a sum to be collected and maintained as a reserve fund for the capital expenditures, deferred maintenance and replacement of Common Elements and personal property held for the joint use and benefit of the Unit Owners. The amount to be reserved shall be determined by the Board of Directors or as may be required under the provisions of the Condominium Act and may be waived or reduced by a vote of the statutory requisite percentage of Unit Owners at a duly called meeting of the Association. The vote to waive or reduce reserves must be taken annually.

17.6 **Use of Association Funds.** Except as provided herein with regard to reserve accounts, all monies and assessments collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles, and Bylaws. As the moneys for Assessments are paid to the Association by any Unit Owner (but not any moneys collected therein for reserves), the same may be commingled with moneys paid to the Association by the other owners of Units. Reserve and operating accounts of the Association shall not be commingled. For purposes of facilitating allocation of funds into their proper accounts, the Association may require Unit Owners to pay operating expenses and reserve escrows by separate instrument. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of Common Elements, including, without limitation, Common Surplus, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit.

17.7 **Delinquency or Default.** The payment of any assessment or installment thereof due to the Association shall be in default if not paid to the Association on or before the due date thereof. If any assessment or installment is not paid by the due date, the Owner and the Unit shall be assessed an Administrative Late Fee in an amount equal to the greater of FIFTEEN and NO/100 (\$15.00) DOLLARS or two and one-half (2.5%) percent of the unpaid installment if not paid within ten (10) days of the due date or if not paid within thirty (30) days of the due date, the greater of TWENTY FIVE and NO/100 (\$25.00) DOLLARS or five (5%) percent of the unpaid installment. The Unit and Unit Owner shall also be liable for payment of all late charges and interest assessed by the Community Association according to the requirements governing documents for said association.

Those sums, assessments and installments thereof together with applicable fines and late fees detailed above not paid within thirty (30) days from the date they are due shall bear interest at the highest lawful rate from the 30th day from due date until paid.



If the delinquent installment(s) of Assessments and any charges thereon are not paid in full when due, the Association at its option may, in accordance with requirements of the Condominium Act, accelerate assessments of an Owner delinquent in payment of Common Expenses. Accelerated assessment shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien is filed and may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration.

Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment or installment. The forgoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying said payment.

If the Association is authorized/required to approve or disapprove a proposed lease of a Unit, disapproval on the basis of a Unit Owner's delinquency in the payment of any installment or assessment at the time approval is sought shall not constitute unreasonable withholding of consent by the Association.

#### 18. **ASSESSMENTS: LIEN AND ENFORCEMENT.**

18.1 **Lien for Assessment.** The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements or Limited Common Elements subordinate to prior bona fide liens of record, which lien shall and does secure the moneys due for all assessments levied against each Unit. Interest which may become due on delinquent assessments owing to the Association and reasonable attorney's fees which may be incurred by the Association in collecting and enforcing its lien upon the Unit and its appurtenances. The lien granted to the Association may be established and foreclosed in the Circuit Court in and for the County. Any such enforcement shall be in accordance with the requirements of the Condominium Act.

As to first mortgages of record, the lien shall be evidenced by a claim recorded among the public records of the County in the manner provided by the Condominium Act, and shall be effective from and as of the time of such recording.

As to other than first mortgages of record, the lien shall relate back to the recording of the original Declaration of Condominium creating the Unit.

The Board of Directors may take such action as it deems necessary to collect Assessments by either an *in personam* action or lien foreclosure, or both, and may settle and compromise the same if in the best interest of the Association. Said liens shall have the priorities established by the Condominium Act.

Liens for Assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. The Association may bid in the Condominium Parcel at foreclosure sale and apply as a cash credit against its bid all sums due the Association secured by the lien being enforced, and the Association may acquire and hold, lease, mortgage and convey any Condominium Parcel so acquired.

In any suit for the foreclosure of the lien the Association shall be entitled to seek a judicial order awarding rental from the Owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a Receiver for the Unit. The rental required to be paid shall be equal to the rental charged on comparable types of Units in the County. The lien of the Association shall secure unpaid assessments, interest, reasonable costs and attorney's fees incurred by the Association incident to the collection process.

**18.2 Effect of Foreclosure or Judicial Sale.** In the event that any person, firm, partnership or corporation shall acquire title to any interest in a Unit and its appurtenant undivided interest in Common Elements by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such person, firm or corporation so acquiring title shall only be liable and obligated for assessments due and payable for the Unit and its appurtenant undivided interest in Common Elements except that a first mortgagee acquiring title thusly is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. However, the first mortgagee's liability is limited to a period not exceeding six (6) months and in no event shall the first mortgagee's liability exceed one(1%) percent of the original mortgage debt. In no event shall the mortgagee be liable for more than six (6) months of the Unit's unpaid common expenses or assessments accrued before the acquisition of the title to the Unit by the mortgagee or one(1%) percent of the original mortgage debt, whichever amount is less. The person acquiring title shall pay the amount owed to the Association within thirty (30) days of the transfer of title.

**18.3 Effect of Voluntary Transfer.** When the Owner of any Unit proposes to sell or mortgage the same in compliance with other provisions of this Declaration, the Association, upon written request of the Unit Owner, shall furnish to the proposed purchaser or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Unit. Such statement shall be executed by an officer of the Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

**18.4 No Election of Remedies.** Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

**19. REGISTRY OF OWNERS AND MORTGAGEES.** The Association shall at all times maintain a Register of the names of the owners and mortgagees of all Units. Upon the transfer of title to any Unit, the transferee shall notify the Association in writing of his interest in such Unit together with recording information identifying the instrument by which such transferee acquired his interest in the Unit. The owner of each Unit encumbered by a mortgage shall notify the Association of the

name and address of the mortgagee, the amount of such mortgage, or mortgages, and the recording information identifying the same. The holder of any mortgage encumbering a Unit may notify the Association of any such mortgage(s), and upon receipt of such notice the Association shall register in its records all pertinent information pertaining to the same.

20. **TERMINATION.** The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

20.1 **Destruction.** In the event it is determined in the manner elsewhere herein provided, that the improvements shall not be reconstructed because of total destruction or major damage, the condominium plan of ownership will be thereby terminated without agreement.

20.2 **Agreement.** If all Unit Owners and the holders of all liens and mortgages upon all of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if "major damage" occurs, the Condominium Property shall be removed from the provisions of the Condominium Act and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall then be the percentage of the undivided interest previously owned by such Owner in the Common Elements, and any liens which encumbered any Condominium Parcel shall be transferred to said undivided interest of the Unit Owner in the Property.

If the Owners of at least eighty-five (85%) percent of the Common Elements elect to terminate, they shall have the option to buy the Units of the other Unit Owners for a period of sixty (60) days from the date of the meeting wherein the election to terminate was taken. The purchase price shall be the fair market value of the Units as of the date of said meeting as determined by arbitration under the rules of the American Arbitration Association. The price shall be paid in cash within thirty (30) days of the determination of the same.

20.3 **Certificate.** The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying to facts effecting the termination, which certificate shall become effective upon being recorded in the public records of the County. When the Board of Directors intends to terminate or merge the Condominium or dissolve or merge the Association, the Board shall so notify the division before taking any action to terminate or merge the Condominium or Association. Upon recordation of the instrument evidencing consent of all of the Unit Owners to terminate the Condominium, the Association, within thirty (30) business days, shall notify the Division of Florida Land Sales, Condominiums and Mobile Homes (the "Division") of the termination and the date the document was recorded, the county in which the document was recorded, and the book and page of the public record in which the document was recorded and shall provide the Division a copy of the recorded termination notice certified by the clerk.

20.4 **Shares of Owners After Termination.** After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in Common in undivided shares. and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owner's Units prior to the termination.

20.5 **Amendment.** This Article cannot be amended without consent of four-fifths (4/5) of the Unit Owners and of all Institutional Mortgagees required to approve termination by agreement.

21. **CONDEMNATION.** Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association unless otherwise provided by law at the time of such taking. Any award made therefor shall be disbursed by the Association in accordance with the applicable provisions of this Declaration and/or determination of the applicable governmental body.

If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Elements, then the award shall be disbursed as provided by law. All related matters, including without limitation alteration of the percentages of undivided interest of the Owners in the Common Elements, shall be handled pursuant to and in accordance with the consent of Owners as required by this Declaration (or such lesser number of owners as may then be prescribed by the Condominium Act for the purpose of altering the percentages of undivided interest of the owners in the Common Elements) expressed in a duly recorded amendment to this Declaration. In the event that such an amendment shall not be recorded within ninety (90) days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in Article, whereupon the development may be terminated in the manner herein prescribed.

If part of the Common Elements is acquired by eminent domain, the award shall be paid to the Association. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit Owners in proportion to their respective Common Element interests before the taking but the portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

The Association shall give to each Mortgagee prompt written notice of any such eminent domain or condemnation proceedings.

## 22. **RIGHTS OF MORTGAGEES.**

22.1 **Rights.** Any Institutional mortgagee of a Unit who makes a request in writing to the Association for the items provided in this Article shall have the following rights:

22.1.1 To be furnished with at least one (1) copy of the Annual Financial Statement and report of the Association.

22.1.2 To be given written notice by the Association of the call of a meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of the Association, which notices shall state the nature of the amendment being proposed.

22.1.3 To be given notice of default (if such default remains uncured for thirty (30) or more days) by any member owning any Unit encumbered by a mortgage held by such

mortgagee, such notice to be given in writing and to be sent to the principal office of such mortgagee or to the place which it or they may designate in writing to the Association.

22.1.4 To be given an endorsement to the insurance policies covering the Common Elements requiring that such Mortgagee be given any notice of cancellation provided for in such policy.

22.1.5 To examine the books and records of the Association upon reasonable notice during ordinary working hours.

22.1.6 To obtain current copies of the Declaration, Bylaws and other rules concerning the project.

22.1.7 To obtain written notice of any condemnation, loss, eminent domain procedures or any casualty loss which affects a natural portion of the Condominium or any Unit upon which such mortgagee has a first mortgage.

22.1.8 To obtain notice of any lapse, cancellation or material modification of any fidelity bond maintained by the Association.

### 23. MISCELLANEOUS.

23.1 **Severability.** The invalidity in whole or in part of any covenant or restriction or any Article, subarticle sentence, clause, phrase or word or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and regulations of the Association shall not affect the validity of the remaining portions thereof.

23.2 **Applicability of Declaration of Condominium.** All present or future owners, lessees, tenants, or any other person who might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration and the mere acquisition or rental of any Unit, or mere act of occupancy of any Unit, shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

23.3 If the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without the Developer's written approval:

23.3.1 Assessment of the Developer as a Unit Owner for capital improvements;

23.3.2 Any action by the Association that would be detrimental to the Developer's sale of Units.

23.3.3 Notices to Unit Owners shall be sent to their place of residence in the Condominium Building, unless the Unit Owner has, by written notice to the Association, specified a different address. Notices to the Association and the Developer shall be delivered by certified

mail to Centex Homes, c/o Centex Realty, Inc., 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida, 32216, with a copy to John S. Duss, IV, Esquire, Ford, Jeter, Bowlus, Duss and Morgan, P.A., 10110 San Jose Boulevard, Jacksonville, Florida 32257. All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice to the other party.

**23.4 Enforcing the Provisions of Declaration, Articles and/or Bylaws.** The Developer and the Association shall have the right at law or in equity to enforce the terms and conditions of this Declaration, the Articles and Bylaws. Unit Owners shall have the rights and remedies established in Section 718.303(i) of the Act. The failure of the Association to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter. Unless otherwise provided herein, the Association may levy against any Owner a fine not in excess of ONE HUNDRED and NO/00 (\$100.00) DOLLARS per violation for each day or the highest fine permitted under the Condominium Act that such Owner continues to violate any of the requirements of this Declaration after the Association has given notice of the violation and an opportunity for hearing to the Unit Owner.

**23.5 Remedy for Violations.** The remedy for violation provided by the Condominium Act shall be in full force and effect. In addition thereto, should the Association find it necessary to institute legal actions, upon a finding by a court in favor of the Association, the defendant Unit Owner shall reimburse the Association for its costs of suit, including reasonable attorney's fees at both trial and appellate level, incurred by it in bringing such action.

**23.6 Gender\Plural Usage.** Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of the plural shall include the singular and the singular shall include the plural.

**23.7 Execution of Documents Required by Government.** The Developer's plan for the development of this Condominium may require from time to time the execution of certain documents required by any governmental agency having jurisdiction over this Condominium. To the extent that said documents require the joinder of Unit Owners, the Association by its duly authorized officers may, as the agent or the attorney-in-fact for the Unit Owners, execute, acknowledge and deliver such documents and the Unit Owners, by virtue of their acceptance of deeds to their Units, irrevocably nominate, constitute and appoint the Association, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable.

**23.8 Construction.** The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. The Florida Condominium Act, as amended to the date hereof, is hereby adopted and made a part hereof. In the event of any conflict between the provisions of this Declaration and the Condominium Act, the provisions of the Condominium Act shall prevail.

**23.9 Parties Bound.** The restrictions and burdens imposed by the Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common

Elements and this Declaration shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become owners of Units in the condominium and their respective heirs, legal representatives, successors and assigns.

***[Remainder of Page Intentionally Left Blank]***

*See Next Page for Signatures*

IN WITNESS WHEREOF, Developer has caused the foregoing Declaration of Condominium to be executed and its corporate seal to be affixed, by its duly authorized officer this 7<sup>th</sup> day of May, 2000.

Signed, sealed and delivered in the Presence of:

**CENTEX HOMES**, a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation  
Its Managing General Partner

Tracey A. Childs  
Print Name Tracey A. Childs  
Patricia H. Herring  
Print Name Patricia H. Herring

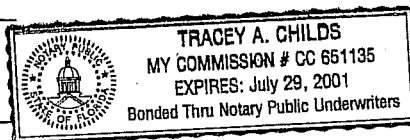
By: [Signature]  
Name: John P. Lewishan  
Title: Division President

STATE OF FLORIDA  
COUNTY OF Flagler



John P. Lewishan The foregoing instrument was acknowledged before me this 7 day of May, 2000, by Douglas W. Smith as Division President of Centex Real Estate Corporation, a Nevada corporation, the Managing General Partner of **CENTEX HOMES**, a Nevada general partnership, on behalf of the partnership.

Tracey A. Childs  
(print name) Tracey A. Childs  
Notary Public, State and County  
aforesaid  
Commission No.: CC651135  
He: (please check appropriate statement)  
☒ is personally known to me  
☐ produced identification (specify type)  
\_\_\_\_\_





# SOUTH BEACH CONDOMINIUM

## SKETCH OF DESCRIPTION

PHASE 1

OFF REC 0744 PAGE 0229

A PORTION OF GOVERNMENT LOT 1, SECTION 29, TOWNSHIP 12 SOUTH, RANGE 32 EAST, AND A PORTION OF GOVERNMENT LOT 5, SECTION 30, TOWNSHIP 12 SOUTH, RANGE 32 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL "A"

REFERENCE THE INTERSECTION OF THE EASTERLY LINE OF CENTRAL AVENUE, A 50 FOOT COUNTY ROAD AS SHOWN ON THE PLAT OF OCEAN PALM SUBDIVISION, RECORDED IN MAP BOOK 5, PAGE 70, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, WITH THE NORTH LINE OF GOVERNMENT LOT 5, SECTION 30, TOWNSHIP 12 SOUTH, RANGE 32 EAST; THENCE RUN S 21°50'52" E ALONG SAID EASTERLY RIGHT OF WAY LINE, 1903.01 FEET TO THE POINT OF BEGINNING; THENCE N 68°09'08" E, A DISTANCE OF 70.02 FEET; THENCE S 21°50'52" E, A DISTANCE OF 48.48 FEET; THENCE N 68°09'08" E, A DISTANCE OF 80.84 FEET; THENCE S 21°50'52" E, A DISTANCE OF 139.09 FEET; THENCE S 68°09'08" W, A DISTANCE OF 80.89 FEET; THENCE S 21°50'52" E A DISTANCE OF 48.47 FEET; THENCE S 68°09'08" E A DISTANCE OF 70.00 FEET TO THE EASTERLY RIGHT OF WAY LINE OF AFOREMENTIONED CENTRAL AVENUE; THENCE N 21°50'52" W ALONG SAID EASTERLY RIGHT OF WAY LINE, 236.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 27,775 SQUARE FEET OR 0.64 ACRES, MORE OR LESS.

AND

PARCEL "B"

REFERENCE THE INTERSECTION OF THE EASTERLY LINE OF CENTRAL AVENUE, A 50 FOOT COUNTY ROAD AS SHOWN ON THE PLAT OF OCEAN PALM SUBDIVISION, RECORDED IN MAP BOOK 5, PAGE 70, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, WITH THE NORTH LINE OF GOVERNMENT LOT 5, SECTION 30, TOWNSHIP 12 SOUTH, RANGE 32 EAST; THENCE RUN S 21°50'52" E ALONG SAID EASTERLY RIGHT OF WAY LINE, 1761.49 FEET TO THE SOUTHWEST CORNER OF AFORESAID OCEAN PALM SUBDIVISION TO THE POINT OF BEGINNING; THENCE N 68°09'08" E, ALONG THE SOUTHERLY LINE OF AFOREMENTIONED OCEAN PALM SUBDIVISION, 195.00 FEET; THENCE S 21°50'52" E, A DISTANCE OF 50.00 FEET; THENCE S 68°09'08" W, A DISTANCE OF 130.36 FEET; THENCE N 21°50'52" W, A DISTANCE OF 20.48 FEET; THENCE S 68°09'08" W, A DISTANCE OF 64.64 FEET TO THE EASTERLY RIGHT OF WAY LINE OF AFOREMENTIONED CENTRAL AVENUE; THENCE N 21°50'52" W ALONG SAID EASTERLY RIGHT OF WAY LINE, 29.51 FEET TO THE POINT OF BEGINNING.

CONTAINING 8,425 SQUARE FEET OR 0.19 ACRES, MORE OR LESS

### SYMBOLS

← = PROPOSED DRAINAGE FLOW

○ UTILITY POLE (WOOD)

⊗ UTILITY POLE (CONC)

→ GUY WIRE

⊕ BENCH MARK

□ WATER METER

★ LIGHT POLE

⊕ FIRE HYDRANT

□ TELEPHONE JUNCTION BOX

□ GAS METER

□ POSTAL MAIL BOX

□ ELECTRIC METER

MANHOLE (? TYPE)

S SANITARY SEWER

D STORM DRAINAGE

E ELECTRIC

T TELEPHONE

■ SET 4x4x24 CONCRETE MONUMENT #2642

● SET 5/8" IRON ROD/CAP 5/8x18 #2642

⊙ SET NAIL/DISK #2642

○ IRON PIPE FOUND SIZE SHOWN

○ FOUND 5/8" IRON ROD WITH CAP NUMBER INDICATED

⊙ NAIL FOUND

□ CONCRETE MONUMENT FOUND SIZE AND NUMBER INDICATED

—X— FENCE TYPE INDICATED

—OU— OVERHEAD UTILITY

x 92.3 = EXISTING ELEVATION

92.3 = PROPOSED ELEVATION

⊕ = PROPOSED TREE

× = WATER VALVE

EXHIBIT "A"

SIGNED:

PETER G. JOHNSON  
FLA. PROFESSIONAL SURVEYOR/MAPPER #5913



## TOMOKA ENGINEERING

CIVIL ENGINEERING & LAND SURVEYING

900 SO. RIDGEWOOD AVE DAYTONA BEACH, FL 32114

(904) 257-1600

FAX (904) 257-1601

email: tomoka-eng@worldnet.att.net

LB0002232

SKETCH OF DESCRIPTION  
PHASE 1

PROJECT NO. 99270CEN

DRAWING  
REFERENCE NO. PARCEL1\_SH1

DATE: 04/25/00

SHEET NO. 1 OF 3

**BY-LAWS  
OF  
SOUTH BEACH AT FLAGLER  
CONDOMINIUM ASSOCIATION, INC.**

A Corporation Not for Profit  
under the Laws of the State of Florida

These are the By-Laws of South Beach at Flagler Condominium Association, Inc. (hereinafter called "Association"), a corporation not for profit, incorporated under the laws of the State of Florida. The Association has been organized for the purpose of administering a condominium created pursuant to Chapter 718, Florida Statutes, as amended (hereinafter called "Condominium Act"). Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth the Declaration of Covenants for the South Beach Community.

**SECTION 1. ASSOCIATION.**

1.1 Office. The office of the Association shall be c/o Centex Realty, Inc., 6620 Southpoint Drive South, Suite 400, Jacksonville, Florida, 32216 or such other place as shall be selected by a majority of the Board of Directors.

1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.

1.3 Seal. The seal of the Association shall have inscribed thereon the name of the Association, the year of its organization, and the words "Not for Profit". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise attached to the instrument or document being sealed.

1.4 Terms. All terms used herein shall have the same definitions as attributed to them in the Declaration of Condominium Ownership of South Beach Condominium.

**SECTION 2. MEMBERS.**

2.1 Qualification. The members of the Association shall consist of all Unit Owners of Condominium Parcels in SOUTH BEACH CONDOMINIUM, and all Unit Owners of Condominium Parcels in each additional condominium which designates the Association for its management and operation.

2.2 Membership.

2.2.1 Membership in the Association shall be established by recording in the public records of Flagler County, Florida, a deed or other instrument establishing a record title to a Condominium Parcel, and delivery to the Association of a copy of such instrument. The grantee in such instrument shall immediately become a member of the Association. The membership of any prior Unit Owner of the same Condominium Parcel shall be terminated upon delivery to the Association of a copy of the deed or other instrument as aforesaid. Unit Owners shall be entitled to:

(1) exercise of the voting rights with regard to the election of members of the Board of Directors;

- (2) exercise of the voting rights with regard to the establishment of the Budget for the Association;
- (3) exercise of the voting rights with regard to the engagement of a Manager for the Association;
- (4) exercise of the voting rights with regard to amendment of the Declaration of Condominium;
- (5) run for the Board of Directors of the Association;
- (6) become an officer of the Association; and
- (7) exercise of the voting rights with regard to amendment of the Articles of the Association, the Declaration of Covenants, or these Bylaws.

2.3 Designation of Voting Representative. If a Condominium Parcel is owned by more than one person, the Unit Owner entitled to cast the vote appurtenant to said Parcel shall be designated by the Unit Owners of a majority interest in said Parcel. A Voting Member must be designated by a statement filed with the Secretary of the Association, in writing, signed by the Unit Owners of a majority interest in a Condominium Parcel as the person entitled to cast the vote for all such Unit Owners. The designation may be revoked and a substitute Voting Member designated at any time at least five (5) days prior to a meeting. If a designation of a Voting Member is not filed with the Secretary at least five (5) days prior to any meeting, no vote shall be cast at such meeting by or for said Unit Owner(s).

2.4 Restraint Upon Alienation of Assets. The share of a member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner, except as an appurtenance to his Condominium Parcel.

### SECTION 3. MEMBER'S MEETINGS.

3.1 Place. All meetings of the members of the Association shall be held at the office of the Association or such other place as may be stated in the notice of the meeting.

3.2 Quorum. The percentage of the voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests.

3.3 Membership List. At least ten (10) days before every election of directors, a complete list of the Voting Members of the Association, arranged numerically by Unit number shall be prepared by the Secretary. Such list shall be kept at the office of the Association and shall be open to examination by any member. Changes in the list of Voting Members may be made pursuant to Section 2.3 of these By-Laws.

3.4 Annual Regular Meetings. Regular meetings of the members of the Association shall be held on the first business day of the month of March of each year.

3.5 Special Meetings.

3.5.1 Special meetings of the members for any purpose may be called by the President, and shall be called by the President or Secretary at the request, in writing, of either a majority of the Board of Directors or of a majority of the Voting Members. Such request shall state the purpose of the proposed meeting.

If an adopted budget of the Association requires assessments against the Unit Owners in any fiscal or calendar year which exceed one hundred fifteen percent (115%) of the assessments for the preceding year, the Board, upon written application of ten percent (10%) of the voting interest to the Board of Directors, shall call a special meeting of the Unit Owners within thirty (30) days upon not less than ten (10) days' written notice to each Unit Owner; provided, however, so long as the Developer shall be in control of the Board of Directors, the adopted budget of the Association shall not require assessments against the Unit Owners in any fiscal or calendar year which exceed one hundred fifteen percent (115%) of the assessments for the preceding year, absent the approval of a majority of the voting interests.

A special meeting of the Unit Owners to recall a member or members of the Board of Directors may be called by ten percent (10%) of the voting interests giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting.

3.5.2 Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

3.6 Notice. Written notice of every meeting, special or regular, of the members of the Association, stating the time, place and object thereof, shall be delivered to each Condominium Unit or mailed to each Voting Member at such member's address as shown in the books of the Association at least fourteen (14) continuous days prior to such meeting. No notice shall be required to be given to a person who becomes a Voting Member during such fourteen (14) day period. A notice of each meeting shall be posted in the office of the Association during the entire fourteen (14) day period.

3.7 Participation. All members shall be entitled to participate in any meeting of the Association but only Voting Members shall have the right to vote on any matter brought before such meeting.

3.8 Transfer of Control of the Association. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium, the Unit Owners other than the Developer shall be entitled to elect no less than one-third  $1/3$  of the members of the Board of Directors of the Association. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors of the Association upon the first to occur of:

(a) Three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

(b) Three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

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

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

(e) Seven (7) years after recordation of the Declaration of Condominium, which ever first occurs. The Developer is entitled to elect at least one (1) member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium operated by the Association. Following the time the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-Owned Units in the same manner as any other Unit Owner except for the purposes of requiring control of the Association or selecting the majority members of the Board of Directors.

3.9 Proxies. At any meeting of the members of the Association, the Voting Member shall be entitled to vote in person or by proxy. No proxy shall be valid unless it is granted to a person who is a Unit Owner.

3.10 Vote Required to Transact Business. When a quorum is present at any meeting, the majority of Voting Members present and voting shall decide any question brought before the meeting. If the question is one which requires more than a majority vote by express provision of the Condominium Act or the Declaration of Condominium Ownership, Articles of Incorporation or these By-Laws (hereinafter "Condominium Documents"), the express provision shall govern and control the number of votes required.

Voting Members of the Association present in person or represented by proxy, shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by statute or the Condominium Documents.

#### SECTION 4. DIRECTORS.

4.1 Number. The affairs of the Association shall be managed by Board of Directors, consisting of not less than three (3) nor more than five (5) directors. The number of directors shall be determined from time to time by the Voting Members.

4.2 Term. Each director shall be elected to serve for a term of one (1) year or until his successor shall be elected and shall qualify, except that directors elected prior to the Unit Owners' Initial Meeting shall serve only until such meeting.

4.3 First Board of Directors. The first Board of Directors shall consist of three (3) persons appointed by Developer, who shall hold office and exercise all powers of the Board at the pleasure of Developer but not later than the Unit Owners' Initial Meeting.

4.4 Vacancy and Replacement. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors at a special meeting of directors duly called for this purpose, shall by closed

ballot vote choose a successor or successors who shall hold office for the unexpired term in respect to which such vacancy occurred.

4.5 Election of Directors. Election of Directors for the Board of Directors shall be conducted in the following manner:

4.5.1 Method. The Board of Directors shall be elected by closed ballot or voting machine.

4.5.2 Proxies. Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Association in accordance with applicable regulations. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce 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 bylaws; and for any other requiring or permitting a vote of the Unit Owners.

(1) No proxy, limited or general, shall be used in the election of board members either in general elections or elections to fill vacancies caused by resignation, or otherwise.

(2) Provided however, if a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of section 718.301, Florida Statutes, and rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(3) General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given.

(4) Unit Owners may vote in person at meetings.

(5) Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given.

(6) Every proxy is revocable at any time at the pleasure of the Unit Owner executing it.

4.5.3 Notice.

(1) Not less than sixty (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 a vote, a first notice of the date of the election.

(2) Any Unit Owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the Association not less than forty (40) days before a scheduled election.

(3) Together with the written notice and agenda as set forth herein, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ inches by 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association. However, the Association has no liability for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

4.5.4 Handling of Ballots Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter and the Unit or Unit Numbers being voted, and shall contain a signature space for the voter. Once the ballot is completed, the voter shall place completed ballot in the smaller inner envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the Association. Upon receipt by the Association, no ballot may be rescinded or changed.

The written ballot shall indicate in alphabetical order by surname, each and every Unit Owner or other eligible person who desires to be a candidate for the Board of Directors and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. No ballot shall indicate which candidates are incumbents on the Board. No write-in candidate shall be permitted. No ballot shall provided a space for the signature of or any other means of identifying a voter. All ballot forms utilized by the Association, both those mailed to voters or cast in a meeting, shall be uniform in color and appearance.

Any envelopes containing ballots shall be collected by the Association and shall be transported to the location of the duly called meeting of the Unit Owners. The Association shall have made available at the meeting additional blank ballots for distribution to eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided above. Each envelope and ballot shall be handled in the following manner, either by the Board or by a person or persons appointed by the Board. At the meeting, as a first order of business, ballots not yet cast shall be collected. Next the signature and Unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided below. Any exterior envelope not signed by the eligible voter shall be marked "disregarded" or with words of similar import and any ballots contained therein shall not be counted. The voter shall be checked off the list as having voted. Then, in the presence of any Unit Owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall first be removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed and no more ballots shall be accepted. The inner envelope shall then be opened and the ballots shall be removed and counted in the presence of the Unit Owners. Any envelope containing more than one ballot shall be marked "disregarded" or with words of similar import and any ballots contained

therein shall not be counted. All envelopes or ballots whether disregarded or not shall be retained with the official records of the Association.

If the Association should desire to verify the outer envelope information in advance of the meeting, they may do so at a meeting noticed in the manner required for the noticing of Board Meetings, which shall be open to all Unit Owners and which shall be held on the date of the election. An impartial committee designated by the Board may verify the signature and Unit identification on the outer envelope and check the same against the list of qualified voters. These voters shall be checked off the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "disregarded" or with words of similar import and any ballots contained therein shall not be counted.

**4.5.5 Candidacy.** Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the secretary of the Association not less than forty (40) days before a scheduled election. Written notice shall be effective when received by the Association. Written notice shall be accomplished in accordance with one or more of the following methods: (a) by certified mail, return receipt requested, directed to the Association; or (b) by personal delivery to the Association; or (c) by regular U.S. Mail, facsimile, telegram or other method of delivery to the Association.

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

(2) Upon the request of a candidate, the Association shall include an information sheet, no larger than 8½" x 11" 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. Any candidate desiring the Association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the Association not less than thirty-five (35) days before the election. The Association shall not edit, alter or otherwise modify the content of the information sheet provided by a candidate. However, if consented to in writing by the candidates involved, two or more candidate information sheets may be consolidated into a single page. The original copy provided by the candidate shall become a part of the official records of the Association.

**4.5.6 Quorum.** There is no quorum requirement or minimum number of votes necessary for election of the members of the Board of Directors, however, at least twenty (20%) percent of the eligible voters must cast a ballot in order to have a valid election of members of the board of administration.

**4.5.7** Notwithstanding the provisions of this section to the contrary, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the board

**4.5.8** No Unit Owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. Any Unit Owner violating this provision may be fined by the Association. A Unit Owner who needs assistance in casting the ballot for the reasons stated in section 101.051, Florida Statutes may obtain assistance in casting the ballot.



4.5.9 Date of the Election. The regular election shall occur on the date of the annual meeting of the Association.

4.5.10 Interim Vacancies. Any vacancy occurring on the Board prior to the expiration of a term except in the case of a vacancy caused by recall, may be filled by the affirmative vote of the majority of the Board of Directors, even if the remaining directors constitute less than a quorum or by the sole remaining director. In the alternative, a Board may in its discretion hold an election to fill the vacancy in which case the election procedures must conform to the requirements set herein. Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. A board member appointed or elected pursuant to a vacancy shall fill that vacancy until the next regularly scheduled election for any position, regardless of whether the Board Seat to which the member was elected or appointed is scheduled to be filled at that election. If, however, upon appointment, the Association has already mailed or delivered the first notice of election pursuant to this section, the board member appointed or elected as provided herein shall serve until the next election scheduled in the future for any position.

A regular or general election shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present.

4.5.11 Nominating Committees. The Board of Directors shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the Board. The Board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the Board.

4.5.12 Tie Votes. If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the Association shall conduct a run-off election in accordance with the procedures set forth herein. Within seven (7) days of the date of the election at which the tie vote occurred, the Association shall mail or personally deliver to the voters a notice of a run-off election. The only candidates eligible for the run-off election to the Board position are the run-off candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the run-off election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the Association. The run-off election must be held not less than twenty-one (21) days nor more than thirty (30) days after the date of election at which the tie vote occurred.

4.5.13 Any voter who requires assistance to vote by reason of blindness, disability or inability to read or write, may request the assistance of a member of the Board of Directors or other Unit Owner to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth may have a member of the Board of Directors or other Unit Owner or representative without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aide of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice. All voting machines shall meet the requirements set forth in Rule 61B-23.0021(12) Florida Administrative Code.

4.6 Removal. Directors may be removed with or without cause by an affirmative vote or a majority of the Voting Members. A special meeting of the Voting Members may be called for

this purpose by ten (10%) percent of such members upon giving notice of such meeting to all Voting Members as provided in Section 3.5 hereof, such notice to state the purpose of the special meeting. No director shall continue to serve on the Board if during his term of office, his membership in the Association is terminated for any reason.

4.7 Powers and Duties of Board of Directors. All of the powers and duties of the Association under the Condominium Act and the Condominium Documents shall be exercised by the Board of Directors (or its delegate) meeting at which they were elected or as soon thereafter as may be practicable. The Annual meeting of the Board shall be held at the same place as the Voting Members meeting. The Board of Directors may exercise the powers and duties below:

4.7.1 Assessments. To make and collect assessments against members to pay the Common Expenses and the expenses incurred by the Association and the power to make and assess members for capital improvements and replacements.

4.7.2 Disburse. To use the proceeds of assessments in the exercise of its powers and duties.

4.7.3 Maintain. To maintain, repair, replace and operate the Condominium Property in the manner provided by the Declaration of Condominium Ownership.

4.7.4 Purchase. To purchase the necessary equipment and tools required for the maintenance, care and preservation referred to above.

4.7.5 Insure. To insure and keep insured the Condominium Property in the manner set forth in the Declaration of Condominium Ownership and to purchase such other insurance as the Board may deem advisable, including officers and directors liability insurance.

4.7.6 Enforce. To enjoin or seek damages from any Unit Owner for violation of these By-Laws and the terms and conditions of the Declaration of Condominium Ownership.

4.7.7 Employ. To employ and contract with a maintenance service contractor or manager, or either of them, for the maintenance, service and management of the Common Elements and to authorize such contractor and manager or either of them to use or exercise any of the powers it possesses; provided, however, the Association shall retain at all times the powers and duties granted to it by the Condominium Act.

4.7.8 Regulate. To make reasonable rules and regulations concerning the use and occupancy of the Condominium Parcels consistent with the Condominium Documents.

4.8 Annual Statement. The Board will present a full and clear statement of the business and condition of the corporation at the annual meeting of the members.

4.9 Compensation. The directors shall not be entitled to any compensation for service as directors.

## SECTION 5. DIRECTORS MEETINGS.

5.1 Organizational Meetings. The first meeting of each new Board elected by the members shall be held immediately upon adjournment of the meeting at which they were elected or as soon thereafter as may be practicable, which meeting shall be properly noticed to all

members of the Association in advance in accordance with the provisions of these Bylaws and the Act. The Annual Meeting of the Board shall be held at the same place as the voting members' meeting.

5.2 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of all regular meetings shall be given to each director, personally or by mail, telephone or telegraph, at least forty-eight (48) hours in advance to the time named for such meeting. Adequate notice of all regular meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting for the attention of the Unit Owners except in an emergency.

5.3 Special Meetings. Special meetings of the Board may be called by the President on forty-eight (48) hours notice to each director. Special meetings shall be called by the President or Secretary in like manner and on like notice upon the written request of two (2) directors.

5.4 Waiver of Notice. The directors may, by resolution duly adopted, establish regular monthly, quarter-annual or semi-annual meetings. If such resolution is adopted, no notice of such regular meetings of the Board shall be required.

5.5 Quorum. A quorum at a directors' meeting shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the act of a Board, except when approval by a greater number of directors is required by the Condominium Documents.

5.6 Joinder in Meeting by Approval of Minutes. The joinder of a director in any action taken at a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of such director except for the purpose of determining a quorum, or as a vote for or against the action taken.

5.7 Presiding Officer. The presiding officer of a directors' meeting shall be the President of the Association. In the absence of the presiding officer, the directors present shall designate one (1) of their number to preside.

## SECTION 6. OFFICERS.

6.1 Officers. The executive officers of the Association shall be a President, Vice President, Treasurer, and Secretary, each of whom shall be elected at the annual meeting of the Board of Directors. Any two (2) of said officers may be held by one (1) person except that the President shall not also be the Secretary or an Assistant Secretary of the corporation. The Board may elect more than one Vice President. The Board may appoint such other officers and agents that it may deem necessary, who shall hold office at the pleasure of the Board and have such authority and perform such duties as from time to time may be prescribed by said Board.

6.2 Qualification. No person shall be entitled to hold office except a Voting Member or an officer of a corporate Voting Member. No officer except the President need be a member of the Board.

6.3 Term. The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of three-fourths (3/4) of the Voting Members of the Association.

6.4 The President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and directors; shall be an ex-officio member of all standing committees; shall have general management of the business of the corporation; and shall see that all orders and resolutions of the Board are carried into effect.

6.5 The Secretary.

6.5.1 The Secretary shall keep the minutes of the members' meetings and of the Board of Directors' meetings in one or more books provided for that purpose.

6.5.2 He shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law.

6.5.3 He shall be custodian of the corporate records and of the seal of the corporation.

6.5.4 He shall keep a register of the name and post office address of each member and each Voting Member.

6.5.5 In general, he shall perform all duties incident to the office of the Secretary and such other duties as may be assigned to him by the President or by the Board of Directors.

6.6 The Vice President. The Vice President shall have all the duties of the President in his absence, and such other duties as may be prescribed by the Board of Directors.

6.7 The Treasurer.

6.7.1 The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all monies and other valuable effects in the name of and to the credit of the corporation in such depositories as may be designated by the Board of Directors or these By-Laws.

6.7.2 He shall disburse the funds of the corporation as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors at the regular meetings of the Board an account of all his transactions as Treasurer and of the financial condition of the corporation.

6.8 Vacancies. If any office becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors by a majority vote may choose a successor or successors who shall hold office for the unexpired term.

6.9 Resignations. Any director or other officer may resign his office at any time. Such resignation shall be in writing, and shall take effect at the time of its receipt by the corporation, unless some time be fixed in the resignation, and then from the date so fixed. The acceptance of a resignation shall not be required to make it effective.

SECTION 7. APPROVAL BY VOTING MEMBERS.

7.1 The Association shall act through its Board of Directors and only the following matters shall require an affirmative vote of the Voting Members of the Association:

Matter to be approved

Approval Required

- |  |  |
|--|--|
| (1) In the absence of casualty reconstruction, alteration, additions to the Common Elements, exclusive of the Limited Common Elements. | 3/4 of the Voting Members owning Condominium Units in the Condominium.   |
| (2) Alteration, improvements or additions to the Limited Common Elements.  | A majority of the Voting Members representing Condominium Units entitled to use such Limited Common Elements with the concurrence of a majority of the Board |
| (3) Termination of the Project when 90% of the value of the Condominium Property is destroyed.   | 1/4 of the Voting Members owning Condominium Units in the Condominium to be terminated.  |
| (4) Approval of changes in building plans for reconstruction after casualty.   | 3/4 of the Voting Members owning Condominium Units in the affected Condominium; and all of the Voting Members in the affected Condominium Units.             |
| (5) Amendment of By-Laws and Articles of Incorporation.  | 3/4 of the Voting Members owning Condominium Units in the Condominium.   |
| (6) Amendment of the Declaration   | 2/3 of the Voting Members owning Units in the Condominium the Declaration of which is to be amended.   |
| (7) Termination of Condominium   | 4/5 of the Voting Members owning Units in the Condominium which is to be terminated except as provided in item (3) of this Section 7.1                       |
| (8) Election of Directors and Officers.  | Plurality of Voting Members.   |
| (9) Removal of Directors and Officers  | A majority of the Voting Members   |
| (10) Making Agreements of Use of Off-Site Recreational facilities.   | A majority of the Voting Members   |
| (11) Approval of the Purchase of a Condominium Parcel by the Association.  | 3/4 of the Voting Members.   |
| (12) Waiver of reserves for Common Roads   | majority vote of Unit Owners.  |

SECTION 8. CONDUCT OF MEETING.

All meetings of the members and of the Board shall be governed by Robert's Rules of Order.

SECTION 9. FISCAL MANAGEMENT.

The provisions for fiscal management of SOUTH BEACH CONDOMINIUM, and other condominiums managed and operated by the Association, as set forth in the Declaration of Condominium Ownership, are supplemented by the following provisions:

9.1 Accounts. The funds and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

9.1.1 Current Expenses. All funds to be expended during the year for the maintenance of the Common Elements and for the operation and working capital of the Association shall be held in the Current Expense Account. Any balance in this fund at the end of each year may be used to pay Common Expenses incurred in any successive year or may be placed in the Reserve Fund Account. Each Unit Owner except Developer shall, upon becoming a member of the Association, contribute to the Current Expense Account a sum equal to 1/12 of the annual assessment with respect to his Unit. Initial capital contributions made by a Unit Owner in connection with the purchase of their Condominium Unit shall not be used for Common Expenses accruing prior to the time the Developer is responsible for the payment of assessments on Condominium Units owned by it (i.e., prior to the "Guarantee Expiration Date" as defined in the Declaration).

9.1.2 Reserve Fund Account. All funds to be expended for replacement, acquisition, and repair of capital improvements which are a part of the Common Elements or Limited Common Elements shall be held in the Reserve Fund Account.

9.2 (a) Budget. The Board of Directors shall adopt a detailed budget for each calendar year which budget will include the estimated funds required to pay the Common Expenses and provide and maintain funds for the foregoing accounts according to good accounting practices and as may be required by the Condominium Act. If an adopted budget requires assessment against the Unit Owners in any year of an amount exceeding one hundred fifteen (115%) percent of the assessments for the preceding year, and if ten (10%) percent of the Unit Owners file objections to the budget within thirty (30) days after the date of adoption thereof, the Board of Directors shall call a special meeting of the Unit Owners and a majority vote of the Unit Owners shall be required to ratify the budget. If not ratified, the budget shall be revised so as to provide for assessment of not more than one hundred fifteen (115%) percent of the prior year's assessments; provided, however, so long as the Developer shall be in control of the Board of Directors, the adopted budget of the Association shall not require assessments against the Unit Owners in any fiscal or calendar year which exceed one hundred fifteen percent (115%) of the assessments for the preceding year, absent the approval of a majority of the voting interests.

In determining whether the assessment exceeds 115% of similar assessments in a prior year, reasonable reserves for repairs or replacements, expenses which cannot be reasonably anticipated to be incurred on a regular or annual basis, and assessments for betterments shall not be considered in the computation.

(b) (1) The Estimated Operating Budget which is Attachment 3 to the Prospectus is the budget the Developer intends to adopt as the formal budget for the Condominium. The Owners of Units that have been sold by the Developer will be assessed for Common Expenses at the rates as stated in said budget and the Developer will be assessed for the amounts by which the Common Expenses exceed the amounts assessed against the Owners of Units sold by the Developer.

(2) In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds Ten Thousand and No/100 (\$10,000.00) Dollars. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates of or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to budgets in which the members of an Association have, by a majority vote at a duly called meeting of the Association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection.

(3) Prior to turnover of control of the Association by the Developer to the Unit Owners other than the Developer pursuant to section 718.301, Florida Statutes, the Developer has elected to fund reserves for the first two (2) years of the operation of the Association, after which time reserves may only be waived or reduced upon the vote of a majority of all non-developer voting interests voting in person or by limited proxy at a duly called meeting of the Association.

It is understood and agreed that the Developer's liability for current expenses as specified herein shall be limited to that necessary to maintain the Condominium in reasonably good condition, normal wear and tear excepted, expressly recognizing that such normal wear and tear will occur. It is further and specifically understood and agreed that incident to such normal wear and tear, the Condominium will not remain in its original new, unused condition and Developer expressly and specifically shall be under no duty or obligation to maintain it in such condition and shall have no duty or obligation to replace or refurbish the Condominium, or any portion thereof, except as included in the aforesaid duty to maintain the Condominium in reasonably good condition, normal wear and tear excepted.

(4) If a meeting of the Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

(5) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the Association. Prior to turnover of control of an Association by the Developer to Unit Owners other than the Developer pursuant to section 718.301, Florida Statutes, the Developer-controlled Association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-developer voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

9.3 Assessments. Assessments against individual Unit Owners for their shares of the items of the budget shall be made for the calendar year annually, in advance, on or before December 20 preceding the year for which the assessments are made. Such assessments shall be payable in twelve (12) equal monthly installments on the first day of each month of the year for which the assessments are made. The Board of Directors shall annually adopt a budget for use during that year. If an annual assessment is not made as required, an assessment shall be

presumed to have been made in the amount of the last prior assessment and monthly payments thereon shall be due upon the first day of each month until changed by an amended assessment. The budget and assessments therefor may be amended at any time by the Board of Directors.

9.4 Depository. The funds of the Association will be deposited in such banks or savings and loan associations as shall be designated from time to time by the Board of Directors. Withdrawal of funds from such accounts shall only be by check signed by such persons as authorized by the Board.

9.5 Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph the term "persons who control or disburse funds of the Association" includes but is not limited those individuals authorized to sign checks and the President, Secretary and Treasurer of the Association. The Association shall bear the cost of bonding.

## SECTION 10. RULES AND REGULATIONS.

10.1 As to Common Elements. The Board of Directors may from time to time adopt or amend previously adopted rules and regulations governing the operation, use, maintenance, management and control of the Common Elements. The Secretary shall from time to time post in a conspicuous place on the Condominium Property, a copy of such rules and regulations. Any rules and regulations adopted pursuant hereto shall be reasonable and non-discriminatory.

10.2 As to Condominium Units. The Board of Directors may from time to time adopt or amend previously adopted rules and regulations governing and restricting the use and maintenance of the Condominium Units, provided, however, that copies of such rules and regulations are furnished to each Unit Owner prior to the time the same shall become effective. Where applicable or desirable, a copy thereof shall be posted in a conspicuous place on the Condominium Property, and shall be delivered to each Unit. Any rules and regulations adopted pursuant hereto shall be reasonable and non-discriminatory.

10.3 A copy of the initial rules and regulations for the Condominium Property is attached hereto as Annex I.

10.4 Fines. Upon reasonable notice and an opportunity for hearing, the Association may levy a fine against the Unit Owner of a Unit or its occupant, licensee, or invitee, for failure to abide by any provision of the Declaration, the Association By-Laws, or Rules of the Association. This section does not apply to unoccupied Units.

10.4.1 No fine shall become a lien against a Unit.

10.4.2 No fine shall exceed One Hundred and No/100 (\$100.00) Dollars per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing (as set forth below), provided that no such fine may exceed an aggregate amount of One Thousand and No/100 (\$1,000.00) Dollars.



10.4.3 Prior to the levying of such a fine, the Unit Owner and, if applicable, any licensee or invitee, must be given reasonable notice of at least fourteen (14) days and an opportunity for hearing. The notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A statement of the provisions of the Declaration, Association By-Laws, or Association Rules which have allegedly been violated; and
- (3) A short and plain statement of the matters asserted by the Association.

10.4.4 A party against whom the Association seeks to levy a fine is entitled to a hearing held before a committee of other Unit Owners. Said party shall have the 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. If the committee of other Unit Owners does not agree with the fine, it shall not be levied.

## SECTION 11. DEFAULT.

11.1 Foreclosure. In the event a Unit Owner does not pay any assessments required to be paid to the Association within thirty (30) days from the due date, the Association, acting on its own behalf or through the Manager acting on behalf of the Association may foreclose the lien encumbering said Unit Owner's Parcel created by non-payment of the required monies in the same manner as mortgage liens are foreclosed. The Association shall be entitled to the appointment of a receiver if it so requires. The Association shall have the right to bid on the Condominium Parcel at a foreclosure sale and to acquire, hold, mortgage and convey the same and in so doing shall not be subject to the restriction in Section 7.1(11) of these By-Laws unless the price bid exceeds the amount of the judgment held by the Association. In lieu of foreclosing its lien, or in addition thereto, the Association may bring suit to recover a money judgment for assessments required to be paid to the Association against a Unit Owner, and the Association shall be entitled to recover the costs thereof, together with a reasonable attorney's fee.

11.2 Association Expenses. If the Association becomes the owner of a Condominium Parcel by reason of foreclosure, it may offer said Parcel for sale and, when the sale is consummated, it shall deduct from such proceeds all sums of money due it from monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Condominium Parcel, which shall include, but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Unit in question. All monies remaining after deducting the foregoing items of expenses shall be added to Common Surplus.

11.3 Enforcement. In the event of violation of the provisions of the Condominium Documents as the same are now or may hereafter be constituted, the Association, on its own behalf, may bring appropriate action to enjoin such violation, to enforce the provisions of the Condominium Documents, to sue for damages, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate.

11.4 Consent to the Foregoing Provisions. Each Unit Owner for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and injunctive relief, regardless of the harshness of the remedy available to the Association, and regardless of the availability of other equally adequate legal procedures. It is the intent of all Unit Owners to give to the Association a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from Unit Owners and to preserve each Unit Owner's right to enjoy his Condominium Parcel free from unreasonable restraint and nuisance.

## SECTION 12. MORTGAGE OF UNIT.

12.1 The Association shall maintain a suitable register for the recording of the name and address of mortgagees of Condominium Parcels. Any mortgagee of a Condominium Parcel, may, but is not obligated to, notify the Association, in writing, of its mortgage, in which case its name and address will be entered in the register. If notice of default is thereafter given any member under any applicable provision of the Condominium Documents, a copy of such notice shall be mailed to the mortgagee named in the register.

## SECTION 13. AMENDMENT OF BY-LAWS.

13.1 By-Laws. The By-Laws of the corporation may be altered, amended or repealed, unless specifically prohibited herein, at any regular or special meeting of the members by a three-fourths (3/4) vote of the Voting Members of the Association. No modification or amendment to the By-Laws shall be valid unless set forth or annexed to a duly recorded amendment to the Declaration of Condominium Ownership.

AMENDMENT

TO

SECTION 3.4 OF

BYLAWS

OF

Inst No: 2003018049 Date: 04/03/2003  
GAIL WADSWORTH, FLAGLER Co. Time: 13:08  
Book: 914 Page: 845 Total Pgs: 2

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SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC.

**WHEREAS**, the Bylaws of SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC. were recorded in Official Records Book 744, Page 270, Public Records of Flagler County, Florida, and

**WHEREAS**, it is the desire of at least the required number of individual condominium unit owners to amend Section 3.4 of the aforesaid Bylaws;

NOW, THEREFORE, Section 3.4 is amended as follows:

**3.4 Annual Meetings.** Annual meetings of the members of the Association shall be held on the second Saturday of the month of November each year at 10:00 a.m. at a site designated by the Board of Directors.

IN WITNESS WHEREOF, South Beach at Flagler Condominium Association, Inc. has executed the above and foregoing Amendment this 20<sup>th</sup> day of March, 2003.

WITNESSES:

SOUTH BEACH AT FLAGLER  
CONDOMINIUM ASSOCIATION, INC.

Anna Curtis ANNA CURTIS  
Printed Name:

By Allen K. Corfman  
Allen K. Corfman, President

Dorothy Zirkelbach DOROTHY ZIRKELBACH  
Printed Name:

STATE OF FLORIDA  
COUNTY OF FLAGLER

OFF REC 0914 PAGE 0846

The foregoing instrument was acknowledged before me this 20 day  
of March, 2003, by Allen F. Cortman, President of South  
Beach at Flagler Condominium Association, Inc., a Florida corporation, who ☒ is  
personally known to me or who ☐ has produced  
as identification.

Notary Public

Title or Rank



Rene Majewski

My Commission CC908141

Expires January 30, 2004

Commission Number

Notary Signature

Notary Name Printed

My Commission Expires:

This Instrument Prepared by:

R. MICHAEL KENNEDY

Post Office Box 214319

South Daytona, Florida 32121

OFF REC 0914 PAGE 0847

CERTIFICATE OF AMENDMENT

THIS IS TO CERTIFY THAT:

The following is a true copy of the Amendment to the Bylaws of SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC., which Amendment was, after due and proper notice, approved by the mandatory percentage of condominium owners at a properly called membership meeting, as follows:

**WHEREAS**, the Bylaws of SOUTH BEACH AT FLAGLER CONDOMINIUM ASSOCIATION, INC. were recorded in Official Records Book 744, Page 270, Public Records of Flagler County, Florida, and

**WHEREAS**, it is the desire of at least the required number of individual condominium unit owners to amend Section 3.4 of the aforesaid Bylaws;

NOW, THEREFORE, Section 3.4 is amended as follows:

3.4 Annual Meetings. Annual meetings of the members of the Association shall be held on the second Saturday of the month of November each year at 10:00 a.m. at a site designated by the Board of Directors.

IN WITNESS WHEREOF, South Beach at Flagler Condominium Association, Inc. has executed the above and foregoing Amendment this 20<sup>th</sup> day of March, 2003.

WITNESSES:

SOUTH BEACH AT FLAGLER  
CONDOMINIUM ASSOCIATION, INC.

Anna Curtis ANNA CURTIS  
Printed Name:

By: Allen K. Corlman  
Allen K. Corlman, President


Dorothy Zirkelbach DOROTHY ZIRKELBACH  
Printed Name:

STATE OF FLORIDA  
COUNTY OF FLAGLER

REC 0914 PAGE 0848

The foregoing instrument was acknowledged before me this 20 day  
of March, 2003, by Allen K. Corfman, President of South  
Beach at Flagler Condominium Association, Inc., a Florida corporation, who ☐ is  
personally known known to me or who ☒ has produced  
\_\_\_\_\_ as identification.

Notary Public

Title or Rank Rene Majewski  
 My Commission CC906141  
Expires January 30, 2004

Commission Number

[Signature]  
Notary Signature

Rene Majewski  
Notary Name Printed

My Commission Expires:

➔ This Instrument Prepared by:  
R. MICHAEL KENNEDY  
Post Office Box 214319  
South Daytona, Florida 32121