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**DECLARATION OF CONDOMINIUM
FOR
SUNDOWN RIVERSIDE, A CONDOMINIUM**

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DECLARATION OF CONDOMINIUM FOR SUNDOWN RIVERSIDE, A CONDOMINIUM

Sundown Owners Association, Inc., a Florida corporation not for profit, individually and as Termination Trustee under Section 718.117, *Florida Statutes*, hereby declares:

1. Introduction and Submission.

1.1 The Land. The Trustee (as hereinafter defined), individually and in its capacity as termination trustee pursuant to the Plan (as hereinafter defined) and Section 718.117, *Florida Statutes*, is vested with legal title to certain land located in Escambia County, Florida, as more particularly described in **Exhibit "1"** attached hereto (the "Land").

1.2 Submission Statement. Except as set forth in this Subsection 1.2, the Trustee hereby submits the Land and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, fiber, antennae or equipment) utility installations, technology wires, cables or other equipment reserved by the company installing same (to the extent the ownership of same is reserved to the company in the agreement allowing the installation of same), the Master Life Safety Systems (as hereinafter defined) and all leased property therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered, except as otherwise provided in Article 13 of this Declaration. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided. Any and all Land hereby submitted shall be and remain subject to all covenants, restrictions, easements, terms and conditions set forth in any instruments recorded among the Public Records of the County (as hereinafter defined).

1.3 Name. The name by which this condominium is to be identified is SUNDOWN RIVERSIDE, A CONDOMINIUM (hereinafter called the "Condominium").

2. Definitions. The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- a) "Act" means and refers to Chapter 718, *Florida Statutes*, also known as the "Florida Condominium Act," as the same exists on the date this Declaration is executed by the Trustee.
- b) "Articles" means and refers to the Articles of Incorporation of the Association, as amended from time to time. A copy of the initial Articles of Incorporation of the Association is attached hereto as **Exhibit "5"**. The Articles may be amended as provided therein. It shall not be necessary to amend this Declaration in order to amend the Articles; provided, however, that the Articles may not be amended or interpreted so as to conflict with this Declaration. In the event of any such conflict, the provisions of this Declaration shall prevail.

- c) "Assessment" means and refers to a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner by the Association pursuant to this Declaration.
- d) "Association" means **SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit**, the sole entity responsible for the operation of the Condominium.
- e) "Association Property" means and refers to that property, real and personal, if any, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.
- f) "Board" means and refers to the duly constituted Board of Directors of the Association, from time to time, which is responsible for the administration of the Association.
- g) "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- h) "By-Laws" means and refers to the Bylaws of the Association, as amended from time to time. A copy of the initial Bylaws of the Association is attached hereto as **Exhibit "4"**. The Bylaws may be amended as provided therein. It shall not be necessary to amend this Declaration in order to amend the Bylaws; provided, however, that the Bylaws may not be amended or interpreted so as to conflict with this Declaration. In the event of any such conflict, the provisions of this Declaration shall prevail.
- i) "Charge" means and refers to the imposition of any financial obligation by the Association which is not an Assessment as defined by Subsection 2.3 above. Accordingly, as to Charges, the Association will not have the enforcement remedies that the Act grants for the collection of Assessments.
- j) "Committee" means and refers to a group of Board Members, Unit Owners or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.
- k) "Common Elements" mean and include:
 - i) The portions of the Condominium Property which are not included within the Units (including but not limited to the riparian shoreline as shown and described in Exhibit "2") as described in Sections 7.1 and 7.3 hereof or the Association Property.
 - ii) All structural columns and bearing walls regardless of where located.
 - iii) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units, Common Elements and/or the Association Property.
 - iv) An easement of support in every portion of a Unit which contributes to the support of the Building.

- v) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements or to the Association Property.
 - vi) Any other parts of the Condominium Property designated as Common Elements in this Declaration, which shall specifically include the surface water management system, if any, of the Condominium.
 - vii) Any and all portions of the Life Safety Systems (as hereinafter defined), regardless of where located within the Condominium Property.
- l) "Common Expenses" mean and refer to all expenses incurred by the Association for the operation, management, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service obtained (if obtained) pursuant to a bulk contract; (c) the cost of any bulk contract for broadband, telecommunications, satellite and/or internet services, if any, (d) if applicable, costs relating to reasonable transportation services, road maintenance and operation expenses, management, administrative, professional and consulting fees and expenses, and in-house and/or interactive communications and surveillance systems; (e) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property; (f) to the extent that the Association determines to acquire hurricane shutters or other Hurricane Protection as defined in Section 16.13 hereof, for all or any portion of the Condominium Property, all expense of installation, repair, and maintenance of same by the Board; (g) any lease or maintenance agreement payments required under leases or maintenance agreements for mechanical or other equipment and/or supplies, including, without limitation, leases for recycling and/or trash compacting and/or recycling equipment, if same is leased by the Association rather than being owned by it; (h) any and all costs, expenses, obligations (financial or otherwise) and/or liabilities of the Association and/or running with the Land pursuant to any restriction, covenant, condition, limitation, agreement, reservation and easement now or hereafter recorded in the public records; (i) all expenses related to the installation, repair, maintenance, operation, alteration and/or replacement of Life Safety Systems; (j) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; (k) costs of fire, windstorm, flood, liability and all other types of insurance for the Common Elements and Association Property including, without limitation, and specifically, insurance for officers and Directors of the Association and costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to Section 624.462 Florida Statutes; (l) costs of water and sewer, electricity, gas and other utilities which are not consumed by and metered to individual Units; (m) costs resulting from damage to the Condominium Property which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage, (n) lease fees related to the Submerged Land Lease; (o) costs associated with maintenance, repair, replacement, and insurance of any dock facilities or other improvements to any portion of the submerged land leased to the Association by the Submerged Land Lease; and (p) the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied

to the condominium property by the association as provided by s. 718.115(i)1., Florida Statutes. Common Expenses shall not include any separate obligations of individual Unit Owners.

- m) "Common Surplus" means and refers to the amount of all receipts or revenues, including Assessments, rents or profits, collected by the Association which exceeds Common Expenses.
- n) "Condominium Parcel" means and refers to a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.
- o) "Condominium Property" means and refers to the Land, Improvements and other property or property rights described in Subsection 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- p) "County" means and refers to Escambia County, Florida.
- q) "Declaration" means and refers to this instrument and all exhibits attached hereto, as same may be amended from time to time.
- r) "Dispute", for purposes of Subsection 17.1, means and refers to any disagreement between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owner's Unit or the appurtenances thereto; or (ii) alter or add to a common area or Common Element; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notice of meetings or other actions; (iii) properly conduct meetings; or (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit or Common Element; the interpretation or enforcement of any warranty; or the levy of a fee or Assessment or the collection of an Assessment levied against a party.
- s) "Division" means and refers to the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, State of Florida, or its successor.
- t) "Extraordinary Financial Event" means and refers to Common Expenses resulting from a natural disaster or Act of God, which is not covered by insurance proceeds from the insurance maintained by the Association.
- u) "First Mortgagee" shall have the meaning given to it in Section 12.6 below.
- v) "Improvements" means and refers to all structures and artificial changes to the natural environment (exclusive of landscaping) located or to be located on the Condominium Property, including, but not limited to, the Buildings.
- w) "Institutional First Mortgagee" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, a government sponsored entity, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other lender generally recognized as an institutional lender. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to

which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

- x) "Insured Property" shall have the meaning given to it in Subsection 13.2(a) below.
- y) "Land" shall have the meaning given to it in Subsection 1.1 above.
- z) "Life Safety Systems" means and refers to any and all emergency lighting, audio and visual signals, safety systems, sprinklers, emergency generators and smoke detection systems, which are now or hereafter installed in the Building, whether or not within the Units. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings.
- aa) "Limited Common Elements" means and refers to those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- bb) "Material Amendment" shall have the meaning given to it in Subsection 6.2 below.
- cc) "Plan" means and refers to that certain Plan of Termination of Sundown, a Condominium, Perdido Key, dated December 23, 2008, and recorded in Official Records Book 6409, Page 118 of the Public Records of the County.
- dd) "Stairways" means and refers to any flight of steps, fire corridors, elevators and/or escalators which are at some point located in, or directly accessible from, more than one Condominium Parcel and/or from any Condominium Parcel.
- ee) "Submerged Land Lease" means and refers to Sovereignty Submerged Lands Lease No. 170005501. The submerged land under the leased preempted area is owned by the State of Florida and is subject to Sovereignty Submerged Lands Lease No. 170005501 and the terms and conditions therein. The Trustee is in the process of and anticipates obtaining an assignment of Sovereignty Submerged Lands Lease No. 170005501 to the Association.
- ff) "Trustee" means and refers to Sundown Owners Association, Inc., a Florida corporation not for profit, individually and as Termination Trustee under and pursuant to the Plan and the Act and its successors and assigns.
- gg) "Unit" means and refers to a part of the Condominium Property which is subject to exclusive ownership. References herein to "Condominium Parcels" shall include Units unless the context prohibits or it is otherwise expressly provided.
- hh) "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

3. Description of Condominium.

3.1 Identification of Units. The Land has constructed thereon four (4) Buildings containing a total of forty six (46) Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on **Exhibit "2"** attached hereto. Exhibit "2" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Buildings in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements, Limited Common Elements, and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Unit Owners; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
 - (i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).
 - (ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).
 - (iii) Interior Divisions. Except as provided in Subsections 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries (and to the extent that the walls are drywall and/or gypsum board, the Unit boundaries shall be deemed to be the area immediately behind the drywall and/or gypsum board, so that for

all purposes hereunder the drywall and/or gypsum board shall be deemed part of the Unit and not part of the Common Elements).

- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements. Notwithstanding anything herein contained to the contrary, any elevators (including all mechanical equipment serving, and housing for the elevators) solely serving a Unit (to the exclusion of all other Units) shall be deemed part of the Unit. Lastly, notwithstanding anything to the contrary, the structural components of the Building and the Life Safety Systems, regardless where located, are expressly excluded from the Units and are instead deemed Common Elements.
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "2" hereto shall control in determining the boundaries of a Unit, except that the provisions of Subsection 3.2(c) above shall control unless specifically depicted and labeled otherwise on such survey.

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

- (a) Patios, Balconies, Roof Decks, Terraces, Roof Terraces and/or Lanais appurtenant to Units. Any patio, balcony, roof deck, terrace, roof terrace and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). Except only as set forth below, the Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, with the costs of same being a part of the Common Expenses. Except only as set forth below, each Unit Owner shall, however, be responsible for the maintenance of any other portions of such areas, for the general cleaning, plant care and upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any patio, balcony, roof deck, terrace, roof terrace and/or lanai. A Unit Owner using a patio, balcony, roof deck, terrace, roof terrace and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Trustee and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.
- (b) Parking. All parking spaces shown on Exhibit "2" hereto shall be part of the Common Elements of the Condominium. The Association, acting through the Board, shall have the right (but not the obligation) to assign, with or without consideration, the exclusive right to use any parking space now or hereafter located within the Common Elements of the Condominium, if any, to one or more Units. An assigned parking space shall not become a Limited Common Element but shall remain a Common Element. Instead, the assignee

shall have an exclusive license to use such parking space for the term of the license granted by the Board. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). The decision of the Board to assign specific parking spaces within the Common Elements to a designated Unit, or for specified uses, shall be final, binding and conclusive. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT A PORTION OF THE PARKING FACILITIES MAY BE LOCATED BELOW THE FEDERAL FLOOD PLAIN, AND, ACCORDINGLY, IN THE EVENT OF FLOODING, ANY AUTOMOBILES AND/OR PERSONAL PROPERTY STORED THEREIN IS SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE PREMIUMS, TO THE EXTENT FLOOD INSURANCE IS AVAILABLE, BOTH FOR THE ASSOCIATION IN INSURING THE PARKING FACILITIES, AND FOR OWNERS, MAY BE HIGHER THAN IF THE PARKING FACILITIES WERE ABOVE THE FEDERAL FLOOD PLAIN. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE USE OF A PARKING SPACE, EACH OWNER, FOR SUCH OWNER AND SUCH OWNER'S TENANTS, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ANY RESPONSIBILITY FOR LOSS, DAMAGE OR LIABILITY RESULTING THEREFROM.

- (c) Miscellaneous Areas, Equipment. Except to the extent that same are located within the boundaries of a Unit, any fixtures or equipment (e.g., an air conditioning compressor, other portions of any air conditioning systems, and/or heater, if any, or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet, roof space or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). Without limiting the foregoing, each air conditioning unit (and all equipment and fixtures constituting an individual air conditioning system) located on the roof of the Building which serves only one Unit shall be deemed a Limited Common Element of the Unit it serves. The maintenance (and cost) of any such fixtures and/or equipment and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant.
- (d) Other. If applicable, any other portion of the Common Elements designed as a Limited Common Element by any exhibit to this Declaration or which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e., any hallway and/or elevator landing serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Element under this Subsection 3.3(d), the Owner of the Unit(s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Element were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of any portion of the Common Elements as a Limited Common Element under this Subsection 3.3(d) shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude, or in any way interfere with the passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety

Systems, Stairways, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Public Records of the County):

- (a) Support. Each Unit, the Building and the Improvements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and/or the Association Property, and any other structure or improvement which abuts any Unit, the Building or any Improvements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and monitoring systems, Life Safety Systems, Master Life Safety Systems, digital and/or other satellite systems, broadband communications and other services and drainage in order to serve the Condominium and/or members of the Association. A Unit Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications, monitoring systems, Life Safety Systems, Master Life Safety Systems, digital and/or other satellite systems, broadband communications or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications, monitoring systems, Life Safety Systems, Master Life Safety Systems, digital or other satellite systems, broadband communications and similar systems, hot water heaters, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- (c) Encroachments. If (i) any portion of the Common Elements and/or Association Property encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements and/or Association Property; or (iii) any encroachment shall hereafter occur as a result of (A) construction of the Improvements; (B) settling or shifting of the Improvements; (C) any alteration or repair to the Common Elements and/or Association Property made by or with the consent of the Trustee or the Association, as appropriate, or (D) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements and/or the Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.

- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests, tenants and invitees, and for each member of the Association and its and their guests, tenants and invitees shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements and Association Property as from time to time may be intended and designated for such purpose and use by the Board; and for vehicular and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and Association Property as from time to time may be paved and intended for such purposes. Without limiting the generality of the foregoing, easements are hereby reserved over, under and upon each and every of the Stairways, as may be reasonably necessary to afford access to and from, (i) any parking areas located within the Overall Property, (ii) any portions of the Overall Property as may be reasonably necessary in the event of an emergency, (iii) any portions of the Overall Property as may be reasonably necessary for the operation, maintenance, repair, replacement and/or alteration of any portion of the Overall Property. None of the easements specified in this Subsection 3.4(d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.
- (e) Construction; Maintenance. The Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to close hurricane shutters in the event of the issuance of a storm watch or storm warning.
- (f) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to stage window washing equipment, to perform landscaping maintenance or plant care, to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment (or equipment best serviced from the roof), window washing and/or any other exterior maintenance and/or painting of the Building.
- (g) Public Easements. Fire, police, health and sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Elements in the performance of their respective duties. Additionally, easements are hereby reserved in favor of all Owners and all members of the Association (and their guests, tenants and invitees) for emergency ingress and egress over, through and across all Stairways.
- (h) Roof. A non-exclusive easement in favor of the Association (including, its contractors, agents, designees and assignees) is hereby reserved, to the fullest extent permitted by law, to allow Association to install mechanical equipment, antennas, dishes, receiving, transmitting, monitoring and/or other equipment or items which the Board may elect to install (the "Private Rooftop Equipment"), whether for itself or any third party (including

persons who are not Owners of any portion of the Condominium) upon the roof of the Condominium and/or Association Property and/or upon any mechanical installations located upon the roof. Without limiting the generality of the foregoing, easements in favor of Association shall exist: (i) for pedestrian traffic over, through and across the Common Elements and/or Association Property as may be necessary to access the Condominium rooftop, and, (ii) to connect to the utility systems within the Condominium and/or Association Property and over and across such other portions of the Condominium Property and/or Association Property as may be reasonably necessary to permit hook-up of any Private Rooftop Equipment, and (iii) over, in, under and upon such portions of the Condominium Property and/or Association Property as may be reasonably necessary or appropriate for the installation, maintenance, repair, replacement and/or alteration of the Private Rooftop Equipment. Notwithstanding anything to the contrary contained in this Subsection in exercising any of the easements granted herein, Association may not impair service to any Units and/or the Common Elements and must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities having jurisdiction.

- (i) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Building, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property or Association Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property, the Association Property or the Building).
- (j) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

3.5 Support Elements. All columns and other structural elements supporting any portion of the Improvements shall be and are hereby declared Common Elements whether or not included in Exhibits "1" and/or "2" attached hereto.

- 4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common

Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

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

5.1 Undivided Shares. The undivided interest in the Common Elements and Common Surplus, and the undivided share of the Common Expenses, appurtenant to each Unit, is as set forth on **Exhibit "3"** attached hereto, is based upon the total square footage of each Unit in uniform relationship to the total square footage of each other Unit, as set forth on **Exhibit "3"** attached hereto. For purposes of reference, the unit areas that were used to determine the fractional shares are attached hereto as **Exhibit "3."**

5.2 Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of the Association. Each Unit Owner shall be a member of the Association.

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

6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-third (1/3) of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing in excess of sixty six and two thirds percent (66 2/3%) of the total voting interests of the Association. Unit Owners not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, provided that such approval or disapproval is delivered to the secretary at or prior to the meeting, however, such approval or disapproval may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.

6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, including but not limited to the provisions of Articles 15 and 18 of this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, change the fraction by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus or permit timeshare estates to be created in any Unit (any such change or alteration being a "Material Amendment"), unless the record Owner(s) of the Unit directly affected by such amendment, if any, -and all record owners of mortgages or other liens thereon shall join in the execution of the amendment and the amendment is otherwise approved by in excess of sixty six and two thirds percent (66 2/3%) of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement, operation, repair and maintenance of approved hurricane shutters or other Hurricane Protection as defined in Section 16.13 hereof, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.3 Mortgagee's Consent. No amendment to the Declaration, Articles of Incorporation, or By-laws may be adopted which would affect matters described in sections 718.110(4) or (8) or adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of any mortgagees without the consent of the aforesaid mortgagees in each instance. Except as specifically provided herein, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration, the Articles of Incorporation, or the By-laws and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld. Notice to such mortgagees and matters of consent and joinder of same shall be governed by the provisions of section 718.110(11), Florida Statutes.
- 6.4 Water Management District. No amendment may be adopted which would affect the surface water management and/or drainage systems, including environmental conservation areas, without the consent of the applicable Water Management District (the "District"). The District shall determine whether the amendment necessitates a modification of the current surface water management permit. If a modification is necessary, the District will advise the Association.
- 6.5 Execution and Recording. An amendment shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable amendment is properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

7. Maintenance and Repairs.

- 7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, the interior side of any entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.
- 7.2 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary in this Declaration, or (ii) proceeds of insurance are made available therefor, all

maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements, or portions thereof, to be maintained by the Unit Owners as provided in Subsections 7.1 and 7.3 hereof) and Association Property shall be performed by the Association and the cost and expense thereof shall be assessed to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owners as a Charge.

- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any air conditioning and heating equipment, plumbing or electrical feeds, fixtures, screens (whether on windows or doors), screened enclosures and screen doors serving the Unit, or other items of property which service a particular Unit or Units (to the exclusion of other Units), including, without limitation, any hurricane shutters or other Hurricane Protection as defined in Section 16.13 hereof protecting doors or windows for a particular Unit (other than any such Hurricane Protection installed by the Board pursuant to Section 16.13 of this Declaration), shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.

8. Additions, Improvements or Alterations by the Association. Whenever in the judgment of the Board, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of three percent (3%) of the then applicable budget of the Association in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by an affirmative vote representing a majority of the voting interests represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate three percent (3%) of the then applicable budget of the Association or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year. Notwithstanding anything herein contained to the contrary, to the extent that any additions, alterations or improvements are necessitated by, or result from, an Extraordinary Financial Event, then such additions, alterations or improvements may be made upon decision of the Board alone (without requiring any vote by Unit Owners and without regard to whether the additions, alterations or improvements will exceed the threshold amount set forth above).

9. Additions, Alterations or Improvements by Unit Owner.

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, any structural addition, alteration or improvement in or to his or her Unit or any Limited Common Element which is visible from any other Unit, the Common Elements, and/or the Association Property without, in each instance, the prior written consent of the Board. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may condition the approval in any manner, including, without limitation, retaining

approval rights of the contractor to perform the work, imposing conduct standards on all such workers, establishing permitted work hours and requiring the Unit Owner to obtain insurance naming the Association as an additional named insured. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board, such approval may not be revoked. 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 Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages from the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

- 9.2 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or Master Life Safety Systems, and/or to any other portion of the Condominium Property which may impair the Life Safety Systems and/or Master Life Safety Systems or access to the Life Safety Systems and/or Master Life Safety Systems, without first receiving the prior written approval of the Board. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed by any Unit Owner whatsoever. No barrier including, but not limited to personalty, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

10. Operation of the Condominium by the Association; Powers and Duties.

- 10.1 Powers and Duties. From and after the time this Declaration is recorded in the Public Records of the County, the Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of the Association (respectively, **Exhibits "4" and "5"** annexed

hereto), as amended from time to time. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) Directors. Directors must be natural persons who are 18 years of age or older, and must also be Unit Owners. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit and any Limited Common Elements appurtenant thereto from time to time during reasonable hours as may be necessary for pest control, or other purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units, including, without limitation, (but without obligation or duty) to install and/or close hurricane shutters in the event of the issuance of a storm watch or storm warning and/or to maintain, repair, replace and/or operate Life Safety Systems. Unless the Association expressly assumes the obligation to install and/or close hurricane shutters in the event of the issuance of a storm watch or storm warning, the obligation to put shutters on, and then remove shutters, intended to protect individual Units shall be the sole obligation of the Unit Owner.
- (b) The power to make and collect Assessments and other Charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
- (c) The Association shall assume all of Trustee's responsibilities, if any, to the County and its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the County, as same may be amended, modified or interpreted from time to time) and, in either such instance, the Association shall indemnify and hold Trustee harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.
- (d) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- (e) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as reviewing and evaluating the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (f) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, and assessments of any kind, provided that such

actions are approved in such manner as may be specified in the By-Laws with respect to borrowing.

- (g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and the Association Property.
- (h) The power to acquire, convey, lease and encumber real and personal property. Personal property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board, subject to Section 8 hereof. Real property (including, without limitation, any of the Units) shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board alone; provided that the requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso regarding the debt incurred) shall also apply to the acquisition of real property; provided, further, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for same and the Association, through its Board, has the power to hold, lease, mortgage or convey the acquired Unit(s) without requiring the consent of Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (i) The obligation to (i) operate and maintain the surface water management system in accordance with any permit issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks and (iii) maintain copies of all permitting actions with regard to the District.
- (j) The power to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit and each holder of a lien on any unit by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (k) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles, the Bylaws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

In the event of conflict among the condominium documents regarding the powers and duties of the Association or the terms and provisions of this Declaration, exhibits attached hereto or otherwise, this Declaration shall take precedence over the Articles, By-Laws and applicable rules and regulations; the Articles shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration, or its exhibits on the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 10.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required by the Act or by this Declaration; or (ii) the Association used its best efforts to obtain such insurance as required under the Act. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein, nor deprive Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owner's property during the performance of its duties hereunder. The limitations upon liability of the Association described in this Subsection 10.2 are subject to the provisions of Section 718.111(3) F.S.
- 10.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 10.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 10.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board, is specifically required in this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
- 10.6 Compliance with the Plan. The Trustee created the Condominium pursuant to the terms of the Plan. Notwithstanding anything in the Declaration to the contrary, the Association shall be required to satisfy all requirements, responsibilities and duties of the Association set forth in the Plan with respect to the Condominium Property. The provisions of this Section 10.6 shall not be amended, altered or modified in any manner without the consent of the Trustee.
11. Determination of Common Expenses and Fixing of Assessments Therefor. The Board shall from time to time, and at least annually, prepare a budget for the Condominium and the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this

Declaration and the By-Laws. The Board shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board as aforesaid and shall furnish copies of the budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by, and not waived in accordance with, applicable law) the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

12. Collection of Assessments.

12.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, except as otherwise provided in section 12.6, 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, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

12.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board may levy "Special Assessments" and "Capital Improvement Assessments" upon the following terms and conditions:

- (a) "Special Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
- (b) "Capital Improvement Assessments" shall mean and refer to an Assessment against each Owner and his or her Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.
- (c) Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed three percent (3%) of the then estimated operating budget of the Association, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained. Notwithstanding anything to the contrary, any special assessment resulting from an Extraordinary Financial Event may be adopted by the Board alone without requiring the vote or approval of Unit Owners and regardless of the amount.

12.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. No lien may be filed by the Association against a Unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner in the manner required by section 718.121(4), Florida Statutes. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to a first mortgage of record, the lien is effective from and after the date of the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner and the name and address of the Association. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County. To be valid, the claim of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates, and the claim of lien must be executed and acknowledged by an officer or authorized officer of the Association. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall be effective longer than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced. The one (1) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may accelerate and declare immediately due and payable all installments of Assessments for the remainder of the fiscal year. In the event that the amount of such installments changes during the remainder of the fiscal year, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

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

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

12.5 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.

12.6 First Mortgagee. The liability of the holder of a first mortgage on a Unit (each, a "First Mortgagee"), or its successors or assigns, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the First Mortgagee's acquisition of title is limited to the lesser of:

- (a) The Unit's unpaid Common Expenses and regular periodic 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; or
- (b) One percent (1%) of the original mortgage debt.

As to a Unit acquired by foreclosure or by deed in lieu of foreclosure, the limitations set forth in clauses (a) and (b) above shall not apply unless the First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

A First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

12.7 Estoppel Statement. Within fifteen (15) days after receiving a written request therefor from a Unit Owner or his or her designee, or a mortgagee of a Unit or his or her designee, the Association shall provide a certificate, signed by an officer or agent of the Association, stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his or her Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of such certificate. The amount of such fee shall be included on the certificate.

12.8 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, assessments will be collected monthly and be due on the first day of each calendar month.

12.9 Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

13. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions and by s. 718.111(11), Florida Statutes, as the same may be amended from time to time by the Legislature:

13.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium and Association Property and shall be issued by an insurance company authorized to do business in Florida, or by a surplus lines carrier reasonably acceptable to the Board.
- (b) Named Insured. With regard to insurance purchased by the Association for the coverage described in Subsection 13.2 hereof, the named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, if any, without naming them, and as agent for their mortgagees, if any, without naming them. The Unit Owners and their mortgagees shall be deemed additional named insureds.
- (c) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association or to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association or to the Insurance Trustee (if appointed).
- (d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (e) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property identified in Articles 7.1 and 7.3 hereof, including, but not limited to, their personal property, or coverage for their personal liability, moving and relocation expenses, lost rent expenses and living expenses or for any other risks not otherwise insured in accordance herewith.

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

- (a) Casualty. The Insured Property (as hereinafter defined) shall be insured in an amount not less than one hundred percent (100%) of the full-replacement value thereof, excluding foundation and excavation costs (and subject to such reasonable deductibles as discussed below), as determined by an independent insurance appraisal or update of a prior appraisal to be performed at least once every 36 months. The policy shall provide

primary coverage for the Common Elements and Association Property identified in Article 7.2 hereof, comprised of the following (the "Insured Property"): (i) all portions of the Condominium Property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications and all alterations or additions made to the Condominium Property or Association Property pursuant to section 718.113(2) of the Act, including the Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude the property identified in Articles 7.1 and 7.3 hereof, including all personal property within the Unit or all personal property within the Limited Common Elements, and floor, wall and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing, and all improvements or additions to the Condominium Property that benefit fewer than all Unit Owners which shall be insured by the Unit Owner(s) having the use thereof or by the Association at the cost and expense of the Unit Owner(s) having the use thereof. Such policies may contain deductible provisions as determined by the Board and as described in the Act. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, subject to this Declaration, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if required by the First Mortgagee or FNMA/FHLMC, or if the Association so elects.
- (e) Errors and Omissions. The Association shall obtain and maintain adequate liability, errors and omission coverage on behalf of each of the officers and directors of the Association.
- (f) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds,

which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.

- (g) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

- (h) Such Other Insurance as the Board shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board, a member of the Board, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, and if generally available, shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 13.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Adequate hazard insurance shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost shall be determined at least once every 36 months.
- 13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board deems appropriate. The Board shall determine the appropriate deductible for each policy of insurance. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Association in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Association may, but shall not be obligated to, establish a reserve to cover any applicable deductible.
- 13.5 Insurance Trustee or Association; Share of Proceeds. If an Insurance Trustee has not been appointed by the Association, then the Association is hereby irrevocably appointed as an agent and attorney-in-fact for each and every Unit Owner, for each Institutional First Mortgagee and/or

each owner of any other interest in the Condominium Property to adjust and settle any and all claims arising under any insurance policy purchased by the Association and to execute and deliver releases upon the payment of claims, if any. The decision to engage or appoint an Insurance Trustee, or not to do so, lies solely with the Association. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to the Insurance Trustee, if one is appointed by the Association, which may be designated by the Board as provided in Subsection 13.10 below and in this Subsection 13.5, and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee or the Association, as applicable, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit.
- (b) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association and/or Insurance Trustee, as applicable, shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trustee. All expenses of the Insurance Trustee (if any) shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Subsection 13.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President

and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

- 13.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 13.8 Unit Owners' Personal Coverage. All Unit Owners are required to insure all real or personal property identified in Sections 7.1 and 7.3 hereof. Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual Unit Owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than \$2,000 per occurrence. The Association shall require each Owner to provide evidence of a currently effective policy of hazard and liability insurance, but not more than once per year upon request of the Association, which policy(ies) shall provide coverage, at a minimum, upon the property identified in Sections 7.1 and 7.3 hereof. Upon the failure of an Owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within thirty (30) days after the date on which a written request is delivered, the Association may purchase a policy of insurance on behalf of an Owner, or may otherwise enforce this obligation against the Unit Owner in accordance with s. 718.1255, Florida Statutes, or as may otherwise be provided by law. The cost of such a policy, together with reconstruction costs undertaken by the Association but which are the responsibility of the Unit Owner, may be collected in the manner provided for the collection of Assessments pursuant to section 718.116 of the Act. Each insurance policy issued to an individual Unit Owner providing such coverage shall be without rights of subrogation against the Association operating the Condominium in which such individual's Unit is located. The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his or her Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 13.9 Benefit of Mortgagees. Certain provisions in this Section 13 are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 13.10 Appointment of Insurance Trustee. The Board shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association, pursuant to Subsection 13.5 above, will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 13.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
14. Reconstruction or Repair After Fire or Other Casualty.

- 14.1 Determination to Reconstruct or Repair. Subject to the provisions of the immediately following paragraphs and subject to Section 718.117 of the Act, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Insured Property and the Association and/or Insurance Trustee (if appointed), as applicable, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

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

- 14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board and then applicable building and other codes, and, if the damaged property which is to be altered is a separate Building or by the Owners of not less than eighty percent (80%) of the applicable interests in the Common Elements of such Building the plans for which are to be altered

- 14.3 Responsibility for Repair or Reconstruction after Casualty Loss. The responsibility for all necessary reconstruction and repair after a casualty loss shall be that of the Association except as provided by section 718.111(11)(g)3, Florida Statutes.

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

- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by Subsection 14.2(a)(i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be distributed to all Unit Owners as Common Surplus or may be used to offset future assessments, or may be placed in a reserve account, as determined by the Board in the exercise of its discretion. Any such distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance may be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

14.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.

14.5 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

15.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty where the condominium is not terminated pursuant to section 15.2 below, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee and shall be treated in the manner of insurance proceeds

as described by Article 13 of this Declaration. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board, a Charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

- 15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued or terminated after condemnation shall only be determined in the manner provided for optional termination as set forth in s. 718.117(3), Florida Statutes.
- 15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds pursuant to s. 718.117, Florida Statutes. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 15 specifically provided.
- 15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the fraction representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the fraction of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
 - (i) add the total of all fractions of all Units after reduction as aforesaid (the "Remaining Fractional Balance"); and
 - (ii) divide each fraction for each Unit after reduction as aforesaid by the Remaining Fractional Balance.

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all fractions of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Subsection 15.4(c) hereof (the "Fractional Balance"); and
 - (ii) divide the fraction of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Subsection 15.4(c) hereof, by the Fractional Balance.

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

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable fractional shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American

Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable fractional shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

- 15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable or improved in the manner approved by the Board; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall in the discretion of the Board be either kept by the Association as a setoff to future assessments or distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.
- 15.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.
16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:
 - 16.1 Occupancy. Each Unit shall be used as a residence and/or home office only, except as otherwise herein expressly provided, in accordance with, and only to the extent permitted by, applicable County, state and federal codes, ordinances and regulations. Home office use of a Unit shall only be permitted to the extent permitted by law and to the extent that the office is not staffed by employees, is not used to receive clients and/or customers and does not generate additional visitors or traffic into the Unit or on any part of the Condominium Property.
 - 16.2 Children. Children shall be permitted to be occupants of Units.
 - 16.3 Pet Restrictions. No livestock, reptiles or poultry of any kind shall be raised, bred, or kept on or in any portion of the Overall Property. Only Unit Owners residing in a Unit shall be permitted to maintain a pet in a Unit. Any tenant of a Unit Owner leasing a Unit shall be expressly prohibited from maintaining a pet in a leased Unit. Unit Owners occupying a Unit may maintain pets in their Unit in compliance with the Rules and Regulations promulgated by the Board, provided that neither the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board, each Unit Owner, the Association in such regard. Without limiting the generality of Section 17 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to,

the right to fine Unit Owners (as provided in the By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property.

- 16.4 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to Section 10 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing or altering any electrical wiring or plumbing systems, installing television antennae, satellite dishes, electronic devices, transmitting and/or receiving equipment, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of the Unit, without obtaining the prior written consent of the Association (in the manner specified in section 9.1 hereof). Notwithstanding the provisions of Subsection 9.1 above, any Unit Owner may display one portable, removable United States flag in a respectful way, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard. Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face the exterior windows or glass doors of Units shall be white or off-white in color and shall be subject to disapproval by the Association, in which case they shall be removed and replaced by the Unit Owner, at such Owner's sole cost and expense, with items acceptable to the Association.
- 16.5 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Subsection 16.5. Additionally, no Unit Owner shall be permitted to store any items whatsoever on balconies, patios, or terraces, including, without limitation, bicycles and/or motor bikes.
- 16.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration shall be deemed a nuisance regardless of any noises and/or odors emanating therefrom (except, however, to the extent that such odors and/or noises exceed limits permitted by applicable law).
- 16.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Subsection 16.7.
- 16.8 Leases. Unit owners may rent their units; however, no portion of a Unit (other than an entire Unit) may be rented or subleased. Every lease of a Unit shall be in writing and shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this

Declaration (and all Exhibits hereto), and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease and/or any modifications, renewals or extensions of same). The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant. All leases are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. If so required by the Association, a tenant wishing to lease a Unit shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Payment of interest, claims against the deposit, refunds and disputes regarding the disposition of the deposit shall be handled in the same fashion as provided in Part II of Chapter 83, Florida Statutes.

If permitted by applicable law, the lease of a Unit for a term of six (6) months or less is subject to a tourist development tax assessed pursuant to Section 125.0104, Florida Statutes. A Unit Owner leasing his or her Unit for a term of six (6) months or less agrees, and shall be deemed to have agreed, for such Owner, and his or her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any and all costs, claims, damages, expenses or liabilities whatsoever, arising out of the failure of such Unit Owner to pay the tourist development tax and/or any other tax or surcharge imposed by the State of Florida with respect to rental payments or other charges under the lease, and such Unit Owner shall be solely responsible for and shall pay to the applicable taxing authority, prior to delinquency, the tourist development tax and/or any other tax or surcharge due with respect to rental payments or other charges under the lease.

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

- 16.9 Weight, Sound and other Restrictions. Unless meeting the sound insulation specifications established from time to time by the Board, hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers, kitchens and bathrooms. Even once approved by the Board, the installation of insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. Additionally, the floor coverings (and insulation and adhesive material therefor) installed on any balcony, terrace, patio and/or lanai shall not exceed a thickness that will prevent proper drainage of the balcony, terrace, patio and/or lanai and such flooring must terminate one inch (1") from the inside edge of the bottom railing. Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. All areas within a Unit other than foyers, kitchens and bathrooms, unless to receive floor coverings approved by the Board, are to receive sound absorbent, less dense floor coverings, such as

carpeting or hard surface floor coverings meeting the specifications described above. The Board will have the right to specify the exact material to be used on balconies, terraces, patios and/or lanais. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

Notwithstanding anything herein contained to the contrary, the installation of insulation under hard surface floor coverings shall not be required for any Unit that is not located above another Unit or above Common Elements that may reasonably be considered by the Board to be areas of general circulation (e.g. lobbies, hallways, mailrooms, if any etc.), and/or recreational areas. Accordingly, if a Unit has no Improvements below it shall not be required to install insulation under hard surface floor coverings. The provisions of this Section 16.9 regarding the installation of flooring and insulation requirements shall apply only to new installation or replacement of flooring after the date this Declaration is recorded.

- 16.10 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Elements or Association Property, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board, masonry block or concrete wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F or less, to minimize humidity in the Unit. Leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. It is the Unit Owner's responsibility to keep the Unit clean, dry, well-ventilated and free of contamination and to monitor the Unit when the Unit Owner is absent from the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Unit Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. In furtherance of the rights of the Association as set forth in Subsection 10.1(a) above, if the Association reasonably believes that the provisions of this Subsection 16.10 are not being met, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Unit Owner or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Unit Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Unit Owner to the Association, with all such costs to be deemed Charges hereunder).

The provisions of this Section 16.10 regarding the wall coverings and paint and the installation of built-in casework, furniture or shelving shall apply only to new applications, installation or replacement such items after the date this Declaration is recorded.

- 16.11 Exterior Improvements. Without limiting the generality of Subsections 9.1 or 16.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies, lanais or windows of the Building (including, but not limited to, awnings, signs, hurricane shutters, satellite dishes, screens, window tinting, furniture, fixtures and equipment), without the

prior written consent of the Association. However, the Association may not refuse the request of a Unit Owner for a reasonable accommodation to allow attachment of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep, on the Mantel or frame of the Unit Owner's door.

- 16.12 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Subsection 10.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units (or to otherwise make access available) to the Association for use in the performance of its functions. No Unit Owner shall change the locks to his or her Unit (or otherwise preclude access to the Association) without so notifying the Association and delivering to the Association a new set of keys (or otherwise affording access) to such Unit. Any Unit Owner with a Unit equipped with a burglar alarm or other security system shall provide the Association with access to the system.
- 16.13 Hurricane Shutters and Other Hurricane Protection. The Board shall, from time to time, establish specifications for hurricane shutters, that comply with or exceed the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. The Board may, with the approval of a majority of the voting interests in the Condominium, install Hurricane Protection, except that a vote of the Owners is not required so long as the maintenance, repair, and replacement of the Hurricane Protection is the responsibility of the Association, and shall (without requiring approval of the membership) maintain, repair or replace such approved Hurricane Protection, whether on or within Common Elements, Limited Common Elements, Units or Association Property; provided, however, that if Hurricane Protection was previously installed which complies with or exceeds the current applicable building code, the Board may not install Hurricane Protection in accordance with this provision. All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. A Unit Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his or her Unit prior to departure by designating a responsible firm or individual to care for the Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. The Unit Owner shall be fully responsible and accountable for opening and closing any hurricane shutters protecting openings to his or her unit; however, the Association is authorized to enter the Units and to operate the hurricane shutters without the permission of the Unit Owners when deemed reasonably necessary to protect and preserve the condominium property and the association property. A Unit Owner who has already installed Hurricane Protection(s) pursuant to s. 718., 113(5), Florida Statutes, that meets or exceeds the current applicable building code, for his or her Unit shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit, but shall not be excused from any portion of expenses related to maintenance, repair, replacement or operation of same.

If the Association obtains Hurricane Protection for any portion of the Condominium Property, the Association shall be solely responsible for the installation of such Hurricane Protection from time to time and the costs incurred by the Association shall be deemed a part of the Common Expenses of the Condominium that are included in the Assessments payable by Unit Owners. The obligations of the Association assumed hereby shall include, without limitation, development of appropriate plans to allow for the timely installation of the Hurricane Protection for the Common Elements, and all obligations with respect to the repair, replacement and/or upgrade of the Hurricane Protection for the Common Elements. Nothing herein shall obligate the Association to install Hurricane

Protection protecting individual units, nor to open or close hurricane shutters as a storm is approaching, or after it passes.

Regardless of whether or not an Owner has hurricane shutters, in the event of the issuance of a storm watch or storm warning, and until the lifting of the storm watch or storm warning, each Owner and resident of a Unit shall cause all doors and windows of the Unit to be kept closed (except only for passage through such doorways).

- 16.14 Signs. Unit Owners shall not place any type of sign, advertisement or notice on the Common Elements or in or upon a Unit.
- 16.15 Clotheslines. Unit Owners shall not construct, erect or maintain clotheslines or similar devices on the exterior of any Unit or on any Limited Common Element (including, without limitation, balconies, decks, patios or terraces). However, the Board may, without any requirement for approval of the Unit Owners, install upon or within the Common Elements or Association Property solar collectors, clotheslines, or other energy-efficiency devices based on renewable resources for the benefit of the Unit Owners.
- 16.16 Parking Areas. No person shall park, store or keep on any portion of the Common Elements any large commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), boat, boat trailer, trailers of any kind, canoes and/or kayaks, nor may any person keep any other vehicle on the Common Elements which is deemed to be a nuisance by the Board. Nothing herein shall preclude any type of vehicle being on or within the Common Elements during periods of construction and/or when performing deliveries. No trailer, camper, motor home or recreation vehicle shall be used as a residence, either temporarily or permanently, or parked on the Common Elements. No person shall conduct repairs (except in an emergency) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the Common Elements. All vehicles entering upon or parking within the Common Elements will be subject to Rules and Regulations now or hereafter adopted by the Board, which may include, but shall not necessarily be limited to, height, width and length restrictions. Any vehicle or equipment parked or stored in violation of this Declaration may be towed by the Association at the expense of the owner of such vehicle or equipment. The Association will not be liable to the owner of such vehicle or equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing and neither its removal nor failure of the owner of such vehicle or equipment to receive any notice of such violation will be grounds for relief of any kind.
- 16.17 Recorded Agreements. The use of the Units, the Condominium Property and the Association Property shall at all times comply with all restrictions, covenants, conditions, limitations, agreements, reservations and easements now or hereafter recorded in the public records.
- 16.18 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 15 for good cause shown, as determined by the Association in its sole discretion.
17. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into

any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

17.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration pursuant to s. 718.1255, Florida Statutes. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

17.2 Negligence and Compliance. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by the Owner's negligence or by that of any member of the Owner's family or the Owner's guests, employees, agents, invitees or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines (in accordance with, and as and to the extent permitted by, the provisions of Subsection 17.3 below), to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Subsection 17.2 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his or her reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his or her share of Assessments levied by the Association to fund its expenses of the litigation.

17.3 Fines. In addition to any and all other remedies available to the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or the By-Laws or Rules and Regulations of the Association, provided the following procedures are adhered to:

- (a) Notice: The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include: (i) a statement of the date, time and place of the hearing; (ii) a statement of the provisions of the Declaration, By-Laws, or rules which have allegedly been violated; and (iii) a short and plain statement of the matters asserted by the Association.
- (b) Hearing: The non-compliance shall be presented to a committee of other Unit Owners who are neither board members nor persons residing in a board member's household, who shall hear reasons why penalties should not be imposed. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the committee. A written decision of the committee shall be submitted to the Owner or occupant by not later than twenty-one (21) days after the meeting. If the committee does not agree with the fine, the fine may not be levied.
- (c) Fines: The Board may impose fines against the applicable Unit up to the maximum amount permitted by law from time to time. At the time of the recordation of this Declaration, the Act provides that no fine may exceed \$100.00 per violation, or \$1,000.00 in the aggregate.
- (d) Violations: Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident.
- (e) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.
- (f) Application of Fines: All monies received from fines shall be allocated as directed by the Board.
- (g) Non-exclusive Remedy: These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Owner or occupant shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner or occupant.

18. Termination of Condominium. Termination shall be in accordance with the procedures established in Section 718.117 of the Act.

19. Additional Rights of Mortgagees and Others.

- 19.1 Availability of Association Documents. The official records of the association shall be maintained as required by the Act and shall be open to inspection by an Association member or the authorized representative of such member at all reasonable times. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the rules and regulations of the Association; and (e) the books, records and financial statements of the Association.
- 19.2 Amendments. Amendments to the condominium documents which may affect the rights of Mortgagees shall be governed by section 6.3 of this Declaration.
- 19.3 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, the right to timely written notice of:
- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
 - (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
 - (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (d) any proposed action which requires the consent of a specified number of mortgage holders.
- 19.4 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.
20. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of all subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.
21. Additional Provisions.
- 21.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its

office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

- 21.2 Interpretation. The Board shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 21.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 21.4 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 21.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two (2) separate capacities.
- 21.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 21.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 21.8 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 21.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be

deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.

- 21.10 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 21.11 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 21.12 Liability. Notwithstanding anything contained herein or in the Articles, By-laws, any rules or regulations of the Association or any other document governing or binding the Association (collectively, the "Association Documents"), neither the Trustee nor the Association, except to the extent specifically provided to the contrary herein, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Overall Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Overall Property and the value thereof;
 - (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, the County and/or any other jurisdiction or the prevention of tortious activities; and
 - (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of such Owner's acceptance of title to a Unit) and each other person having an interest in or lien upon, or making use of, any portion of the Overall Property (by virtue of accepting such interest or lien or making such use) shall be bound by this provision. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors, nominees and assigns.

IN WITNESS WHEREOF, the Trustee has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of the ____ day of _____, 2009.

Signed in the presence of:

Sundown Owners Association, Inc., a Florida corporation not for profit, as Trustee under that certain Plan of Termination of Sundown, a Condominium, Perdido Key dated _____, 2008.

Name: _____

By: _____
Name: _____
Title: _____

[CORPORATE SEAL]

Name: _____

Address: _____

STATE OF FLORIDA)
) SS:
COUNTY OF ESCAMBIA)

The foregoing Declaration was acknowledged before me, this ____ day of _____, 200__, by _____, as _____ of Sundown Owners Association, Inc., a Florida corporation not for profit, on behalf of said entity(ies). He/she is personally known to me or has produced _____ as identification.

Name: _____

Notary Public, State of Florida
My Commission Expires:
Commission No.: _____

(Notarial Seal)

Exhibit "1"

"Description of Property"

DESCRIPTION: (OFFICIAL RECORDS BOOK 1432, PAGE 663)

PHASE I

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF S.R. #S-292 (100' R/W) AND THE WEST LINE OF SECTION 6, T-4-S, R-32-W, ESCAMBIA COUNTY, FLORIDA;

THENCE GO NORTH 79°29'00" EAST ALONG THE CENTERLINE OF SAID STATE ROAD FOR A DISTANCE OF 445.02 FEET TO A POINT OF CURVATURE;
THENCE CONTINUE ALONG SAID CENTERLINE WHICH IS A CURVE TO THE RIGHT HAVING A RADIUS OF 11,459.20 FEET FOR AN ARC DISTANCE OF 400.0' TO A POINT OF TANGENCY;

THENCE N. 79°29'00" E. ALONG SAID STATE ROAD CENTERLINE 1117.76';

THENCE N. 00°02'00" E. FOR 50.86 FEET TO THE NORTH R/W LINE OF SAID STATE ROAD FOR POINT OF BEGINNING;

THENCE N. 79°29'00" E. ALONG SAID NORTH R/W LINE FOR 273.12';

THENCE N. 00°02'00" E. FOR 442' MORE OR LESS TO THE SHORE LINE OF OLD RIVER;

THENCE MEANDER SOUTHWESTERLY ALONG SAID SHORELINE OF OLD RIVER TO ITS INTERSECTION WITH A LINE PASSED THROUGH THE POINT OF BEGINNING HAVING A BEARING OF N. 00°02'00" E.;

THENCE S. 00°02'00" W. FOR 320' MORE OR LESS TO POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF S.R. #S-292 (100' R/W) AND THE WEST LINE OF SECTION 6, T-4-S, R-32-W, ESCAMBIA COUNTY, FLORIDA;

THENCE GO N. 77°29'00" E. ALONG THE CENTERLINE OF SAID STATE ROAD FOR A DISTANCE OF 445.02' TO A POINT OF CURVATURE;

THENCE CONTINUE ALONG SAID CENTERLINE WHICH IS A CURVE TO THE RIGHT HAVING A RADIUS OF 11,459.20' AN ARC DISTANCE OF 400' TO A POINT OF TANGENCY;

THENCE N. 79°29'00" E. ALONG SAID STATE ROAD CENTERLINE 1117.76';

THENCE N. 00°02'00" E. FOR 50.86' TO THE NORTH R/W LINE OF SAID STATE ROAD;

THENCE N. 79°29'00" E. ALONG SAID NORTH R/W LINE FOR 31.0' TO POINT OF BEGINNING;

THENCE CONTINUE ALONG SAME COURSE FOR 75.0';

THENCE N. 00°02'00" E. FOR 100.0';

THENCE S. 79°29'00" W. FOR 75.0';

THENCE S. 00°02'00" W. FOR 100.0' TO POINT OF BEGINNING.

DESCRIPTION: (OFFICIAL RECORDS BOOK 1397, PAGE 812)

PHASE III

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF S.R. #S-292 (100' R/W) AND THE WEST LINE OF SECTION 6, T-4-S, R-32-W, ESCAMBIA COUNTY, FLORIDA;

THENCE GO N. 79°29'00" E. ALONG THE CENTERLINE OF SAID STATE ROAD FOR A DISTANCE OF 445.02' TO A POINT OF CURVATURE;

THENCE CONTINUE ALONG SAID CENTERLINE WHICH IS A CURVE TO THE RIGHT HAVING A RADIUS OF 11,459.20' FOR AN ARC DISTANCE OF 400.0' TO A POINT OF TANGENCY;

THENCE N. 79°29'00" E. ALONG SAID STATE ROAD CENTERLINE 854.98 FEET;

THENCE N. 00°02'00" E. FOR 50.86' TO THE NORTH R/W LINE OF SAID STATE ROAD FOR POINT OF BEGINNING;

THENCE N. 79°29'00" E. ALONG SAID NORTH R/W LINE FOR 262.78';

THENCE N. 00°02'00" E. FOR 320' MORE OR LESS TO THE SHORE LINE OF OLD RIVER;

THENCE MEANDER WESTERLY ALONG SAID SHORELINE OF OLD RIVER TO ITS INTERSECTION WITH A LINE PASSED THROUGH THE POINT OF BEGINNING HAVING A BEARING OF N. 00°02'00" E.;

THENCE S. 00°02'00" W. FOR 334' MORE OR LESS TO POINT OF BEGINNING.

ALONG AND TOGETHER WITH:

6.00 FOOT BEACH ACCESS STRIP

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF S.R. #S-292 (100' R/W) AND THE WEST LINE OF SECTION 6, TOWNSHIP 4 SOUTH, RANGE 32 WEST, ESCAMBIA COUNTY, FLORIDA;

THENCE GO NORTH 79 DEGREES 29 MINUTES 00 SECONDS EAST ALONG THE CENTERLINE OF SAID STATE ROAD FOR A DISTANCE OF 1445.02 FEET TO A POINT OF CURVATURE;

THENCE CONTINUE ALONG SAID CENTERLINE WHICH IS A CURVE TO THE RIGHT HAVING A RADIUS OF 11,459.20 FEET FOR AN ARC DISTANCE OF 400.00 FEET TO A POINT OF TANGENCY;

THENCE GO NORTH 79 DEGREES 29 MINUTES 00 SECONDS EAST ALONG SAID STATE ROAD CENTERLINE A DISTANCE OF 1390.88 FEET;

THENCE GO SOUTH 00 DEGREES 02 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 50.86 FEET TO THE SOUTH R/W LINE OF SAID STATE ROAD;

THENCE GO SOUTH 79 DEGREES 29 MINUTES 00 SECONDS WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR A DISTANCE OF 329.80 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE GO SOUTH 00 DEGREES 02 MINUTES 00 SECONDS WEST A DISTANCE OF 580.59 FEET TO A POINT ON THE MEAN HIGH WATER LINE OF THE GULF OF MEXICO;

THENCE GO SOUTH 63 DEGREES 39 MINUTES 41 SECONDS WEST ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 6.70 FEET;

THENCE DEPARTING SAID MEAN HIGH WATER LINE GO NORTH 00 DEGREES 02 MINUTES 00 SECONDS EAST A DISTANCE OF 582.46 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID S.R. #S-292;

THENCE GO NORTH 79 DEGREES 29 MINUTES 00 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 6.10 FEET TO THE POINT OF BEGINNING.

PHASE I, PHASE III, AND BEACH ACCESS STRIP ARE PART OF THIS CONDOMINIUM AND ARE CONDOMINIUM PROPERTY. PHASE II AND PHASE IV (LESS AND EXCEPT THE BEACH ACCESS STRIP) AS SHOWN ON THIS DRAWING ARE NOT PART OF THIS CONDOMINIUM AND ARE NOT CONDOMINIUM PROPERTY.

Exhibit "2"

Survey and Graphic Depiction of the Land and Improvements

CERTIFICATE OF SURVEYOR PURSUANT TO § 718.104(e), FLORIDA STATUTES

SUNDOWN RIVERSIDE, A CONDOMINIUM

STATE OF FLORIDA
COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Kenneth J. Monie (the "Affiant"), who being first duly sworn, deposes and says:

1. Affiant is a duly registered and duly licensed land surveyor, authorized to practice under the laws of the State of Florida.
2. Affiant is providing this Certificate of Surveyor pursuant to Section 718.104(4) (e), F.S. (2008).
3. Affiant hereby certifies that the construction of the improvements (the "Improvements"), all as more particularly shown in Exhibits "1" and "2" of the Declaration of Condominium for Sundown Riverside, A Condominium, together with all other provisions of the Declaration describing the Condominium Property as it relates to matters of survey, is an accurate representation of the location and dimensions of the Improvements, and that the identification, location and dimensions of the Common Elements (as defined in the Declaration), the Limited Common Elements (as defined in the Declaration) and each unit of the Condominium can be determined from these materials.
4. All planned improvements, including, but not limited to, landscaping, utility services, access to the Units and common elements facilities serving the Improvements and the Units contained therein as described in paragraph 3, above, have been substantially completed.

Further Affiant sayeth not.

Dated this 2 day of APRIL, 2009.

KJM SURVEYING, INC., a Florida
corporation



Kenneth J. Monie, PSM 4655

Corporate No. LB 0007107

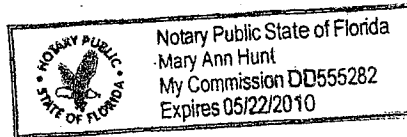
State of Florida

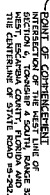
STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was sworn to and subscribed before me this 2 day
of April, 2009, by Kenneth J. Monie, as a professional land surveyor with
KJM Surveying, Inc., a Florida corporation.

Mary Ann Hunt
NOTARY PUBLIC
Print Name: Mary Ann Hunt

☒ Personally known
OR
Produced Identification
Type of Identification Produced _____





 -WOOD
 -CONCRETE
 -ASPHALT
 -GRAVEL

[illegible]

WEDONALD, FLEISCH, WOODHEAD
SANDOWN OWNERS ASSOCIATION, INC.

PHASE I, PHASE II, AND BEACH ACCESS STEP ARE PART OF THE CONDOMINIUM PHASE I AND PHASE II DEVELOPMENT. PHASE III AND PHASE IV (LESS AND EXCEPT THE BEACH ACCESS STEP) AS SHOWN ON THIS DEED ARE NOT PART OF THE CONDOMINIUM AND ARE NOT CONDOMINIUM PROPERTY.

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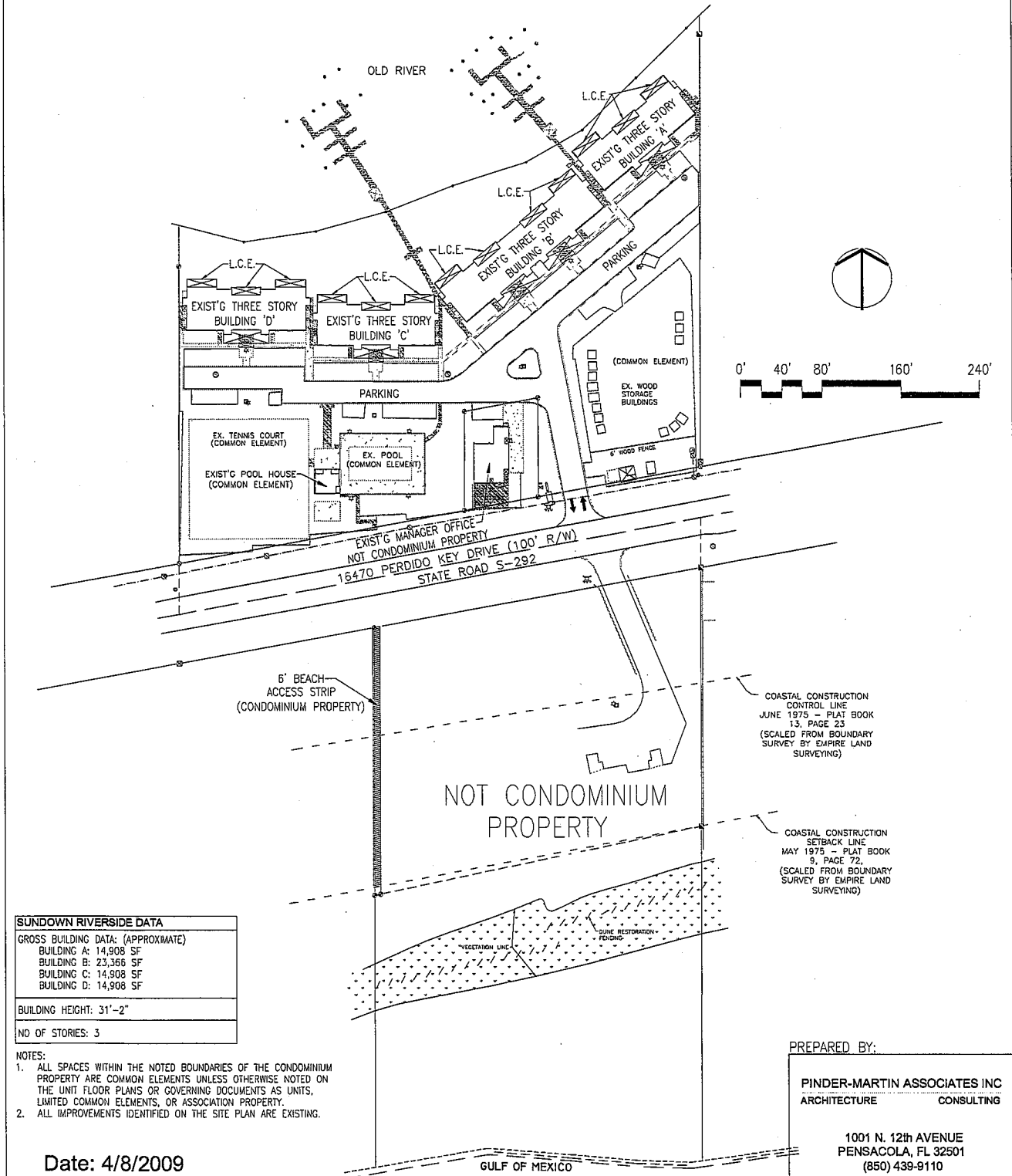
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SUNDOWN RIVERSIDE, A CONDOMINIUM

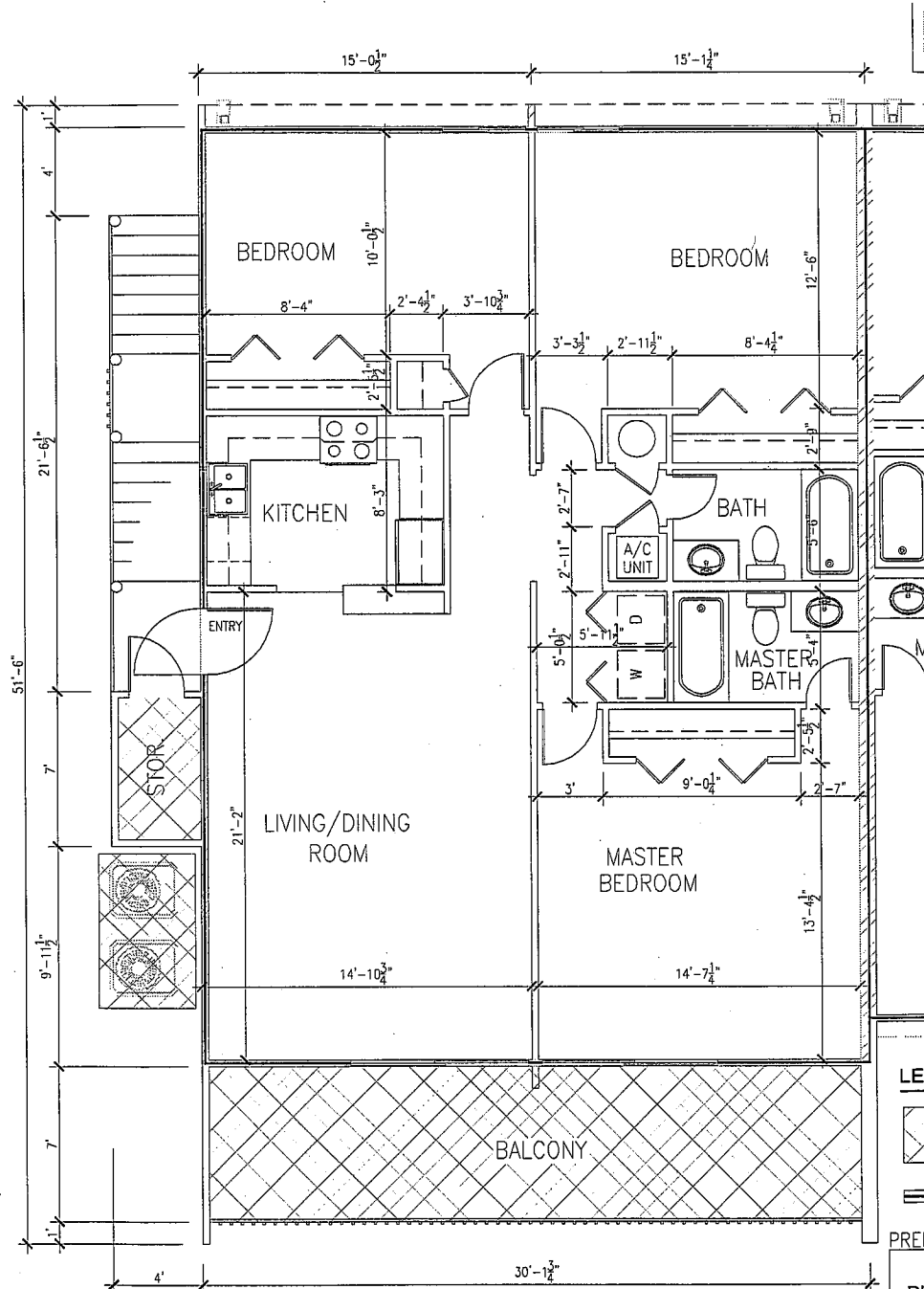
PERDIDO KEY, FLORIDA

ARCHITECTURAL SITE PLAN



SUNDOWN RIVERSIDE, A CONDOMINIUM

PERDIDO KEY, FLORIDA
EXISTING TYPICAL THREE BEDROOM
1,237 Sq. Ft.



UNIT NUMBERS:

UNITS SHOWN:

A11, A21
B11, B21
C11, C21
D11, D21

OPPOSITE HAND:

A14, A24
B16, B26
C14, C24
D14, D24

LEGEND



LIMITED COMMON ELEMENTS



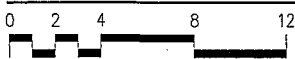
AREA INDICATES UNIT BOUNDARIES

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC
ARCHITECTURE CONSULTING

1001 N. 12th AVENUE
PENSACOLA, FL 32501
(850) 439-9110

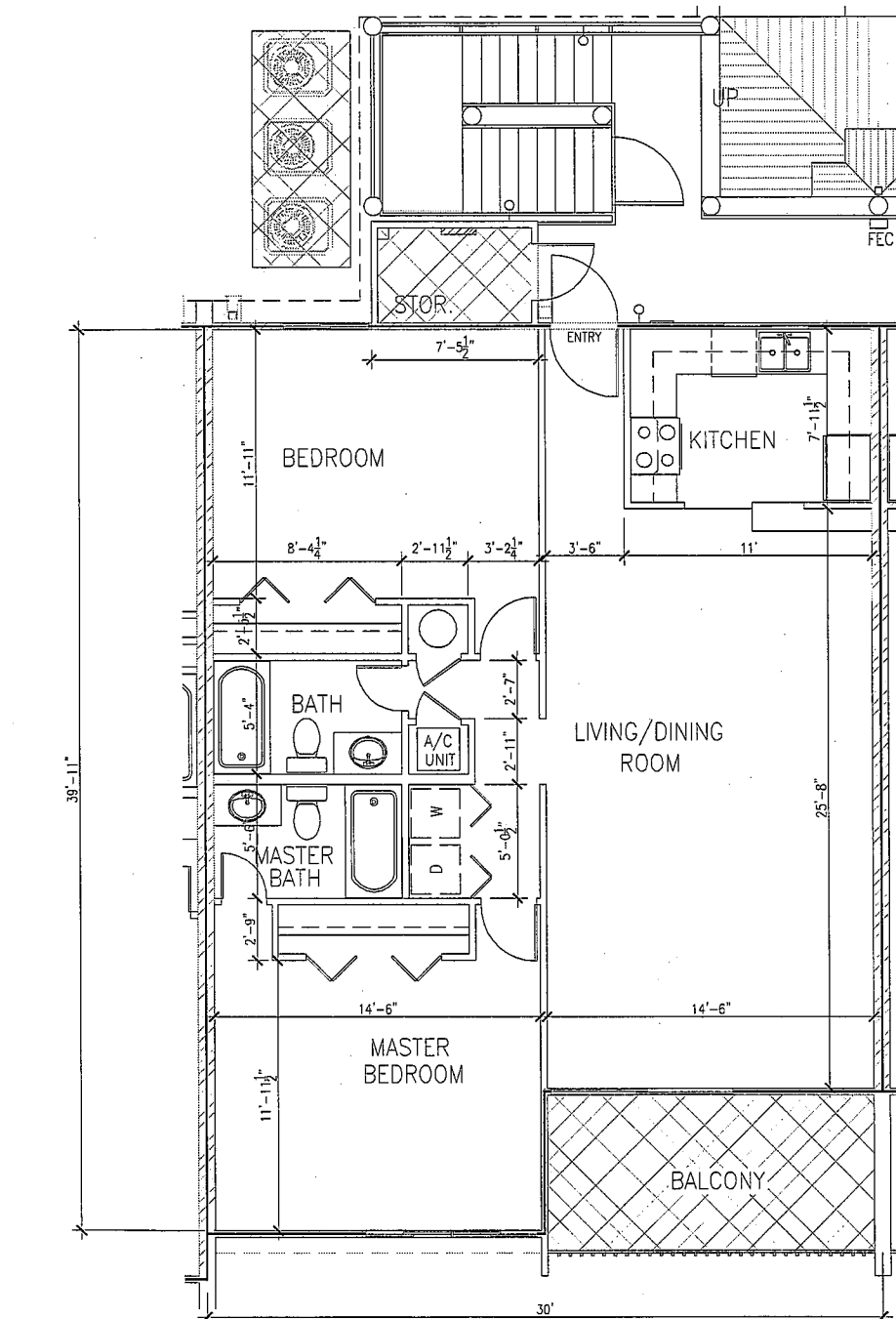
FLOOR PLAN



Date: 4/8/2009

SUNDOWN RIVERSIDE, A CONDOMINIUM

PERDIDO KEY, FLORIDA
EXISTING TYPICAL TWO BEDROOM
1,076 Sq. Ft.



UNIT NUMBERS:

UNITS SHOWN:

A12, A22
B12, B14, B22, B24
C12, C22
D12, D22

OPPOSITE HAND:

A13, A23
B13, B15, B23, B25
C13, C23
D13, D23

LEGEND



LIMITED COMMON ELEMENTS



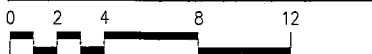
AREA INDICATES UNIT BOUNDARIES

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC
ARCHITECTURE CONSULTING

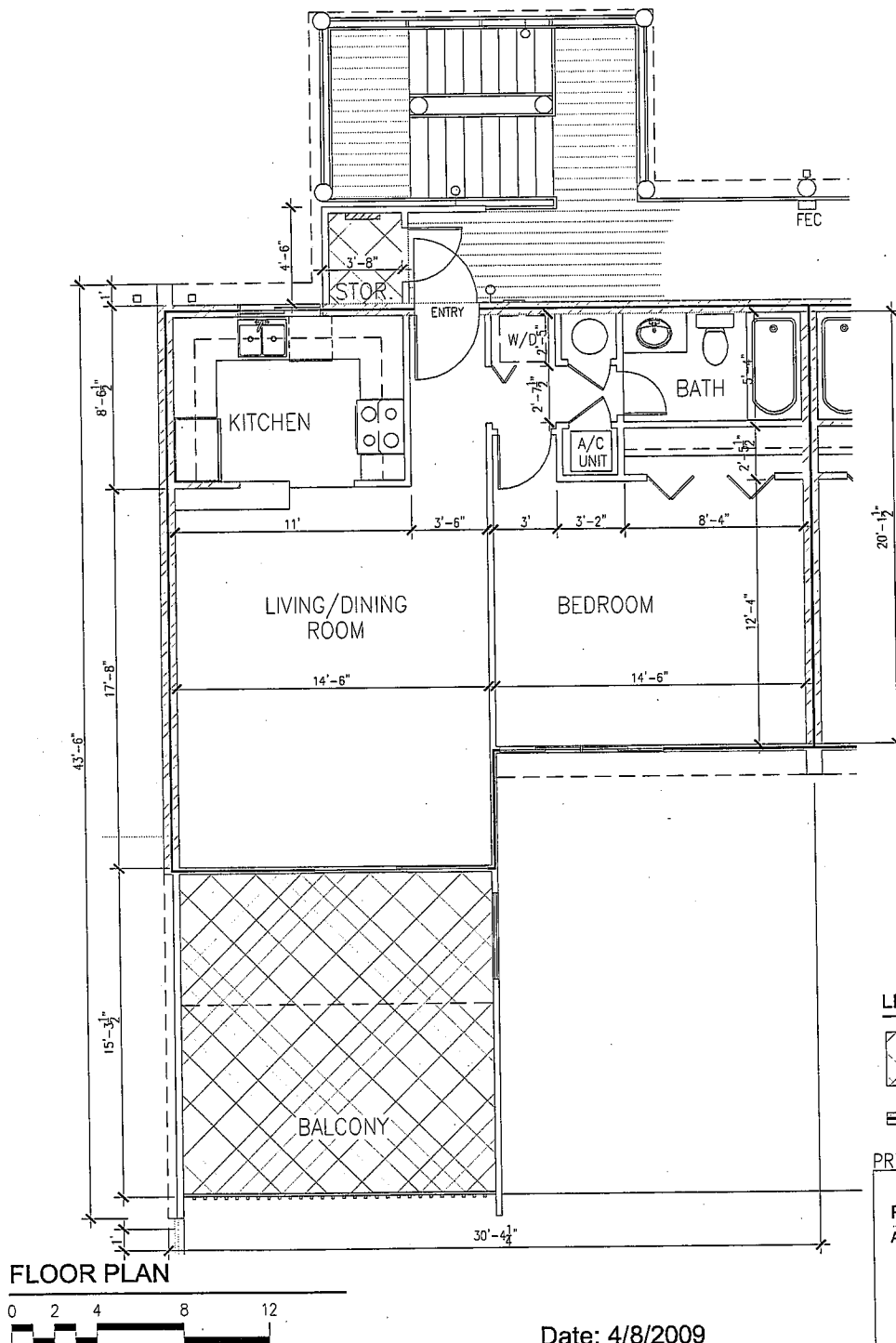
1001 N. 12th AVENUE
PENSACOLA, FL 32501
(850) 439-9110

FLOOR PLAN



Date: 4/8/2009

SUNDOWN RIVERSIDE, A CONDOMINIUM
 PERDIDO KEY, FLORIDA
 EXISTING TYPICAL ONE BEDROOM
 669 Sq. Ft.



UNIT NUMBERS:
UNITS SHOWN:
A32
B32, B34
C32
D32
OPPOSITE HAND:
A33
B33, B35
C33
D33

LEGEND



LIMITED COMMON ELEMENTS



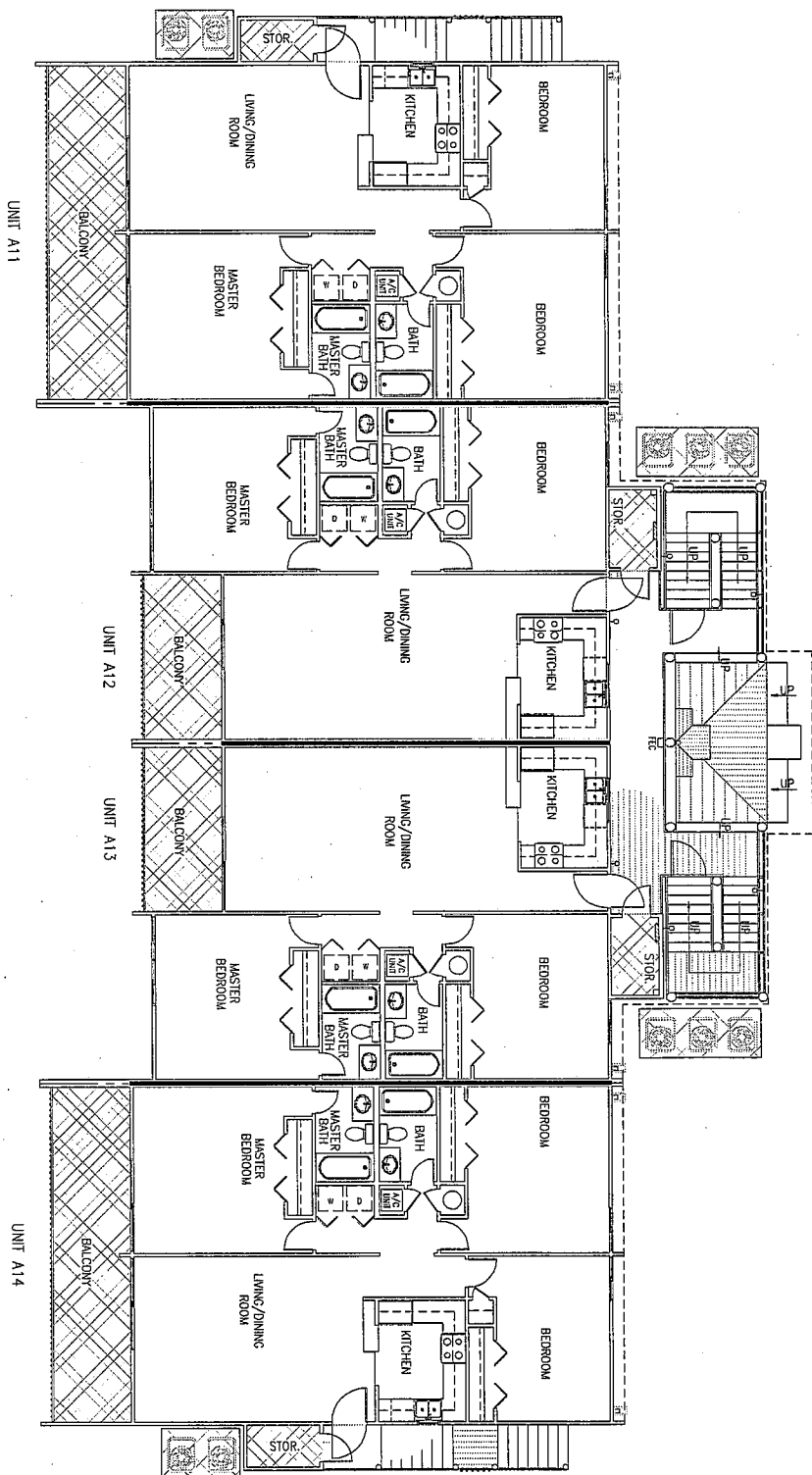
AREA INDICATES UNIT BOUNDARIES

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC
 ARCHITECTURE CONSULTING

1001 N. 12th AVENUE
 PENSACOLA, FL 32501
 (850) 439-9110

SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING A
FIRST FLOOR



LEGEND

-  LIMITED COMMON ELEMENTS
-  UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

FLOOR PLAN



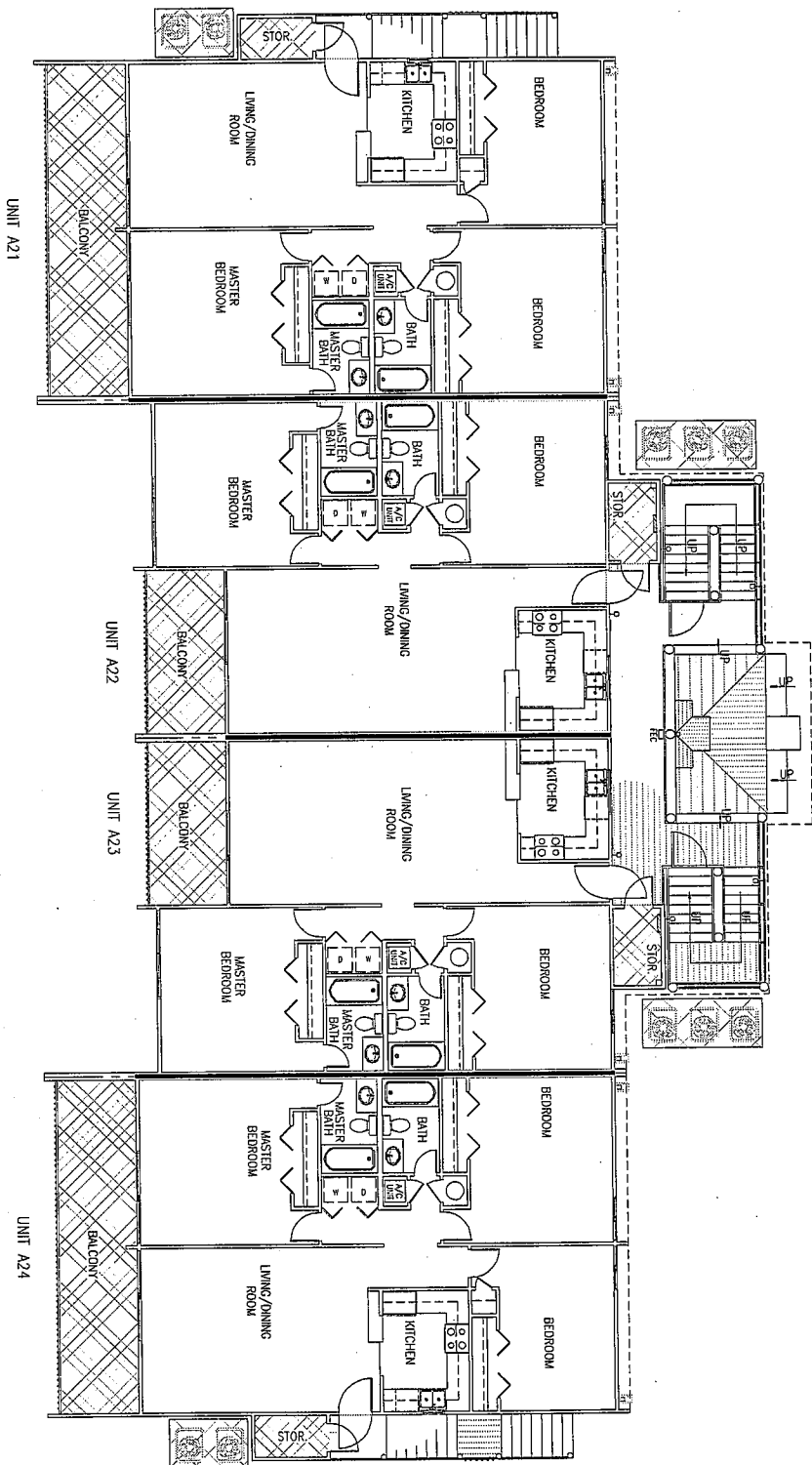
Date: 4/8/2009

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC
 ARCHITECTURE CONSULTING

1001 N. 12th AVENUE
 PENSACOLA, FL 32501
 (850) 439-9110

SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING A
SECOND FLOOR



FLOOR PLAN



Date: 4/8/2009

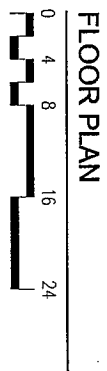
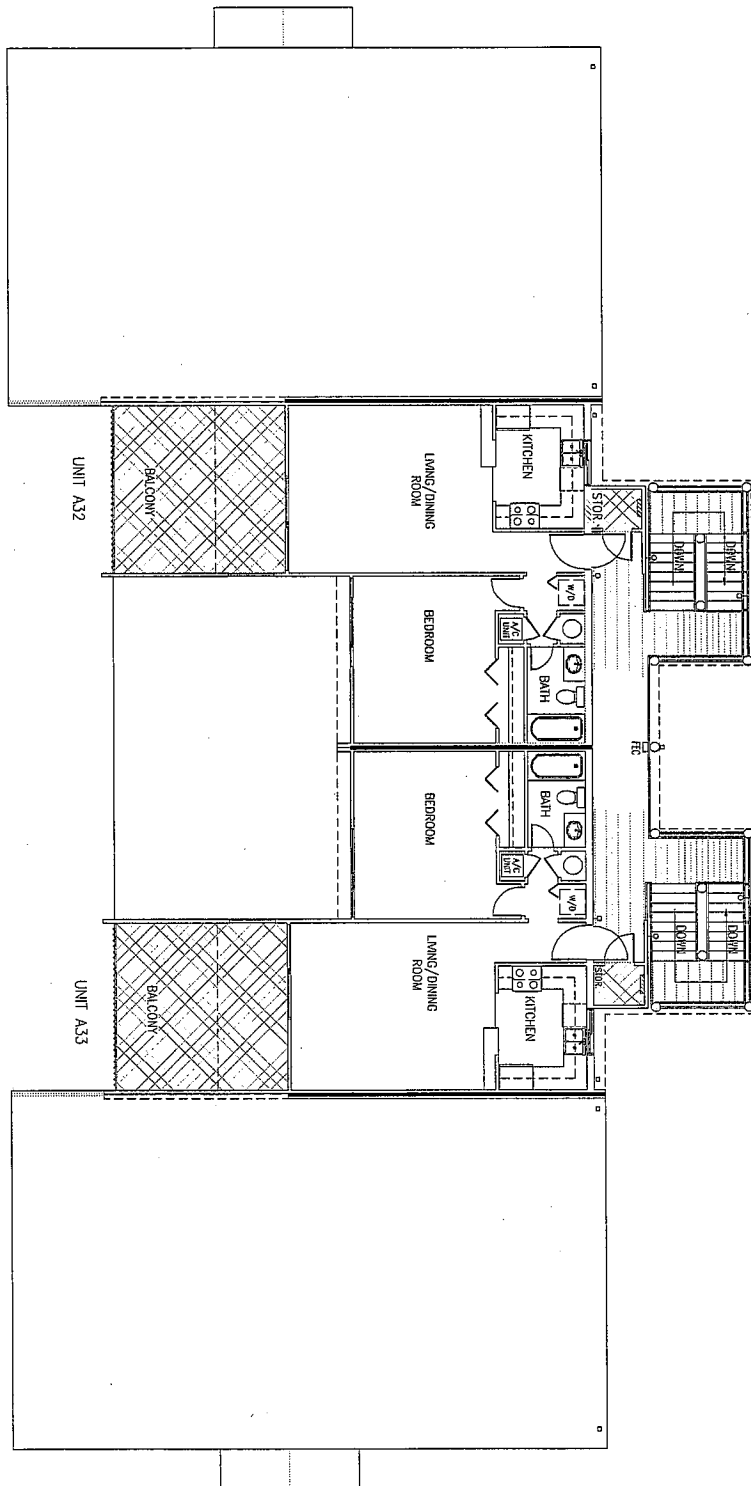
LEGEND

- UNITED COMMON ELEMENTS
- UNIT DIVISION. SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC.
 ARCHITECTURE CONSULTING
 1001 N. 42th AVENUE
 PENSACOLA, FL 32501
 (850) 439-9110

SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING A
THIRD FLOOR



Date: 4/8/2009

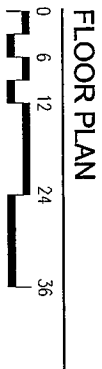
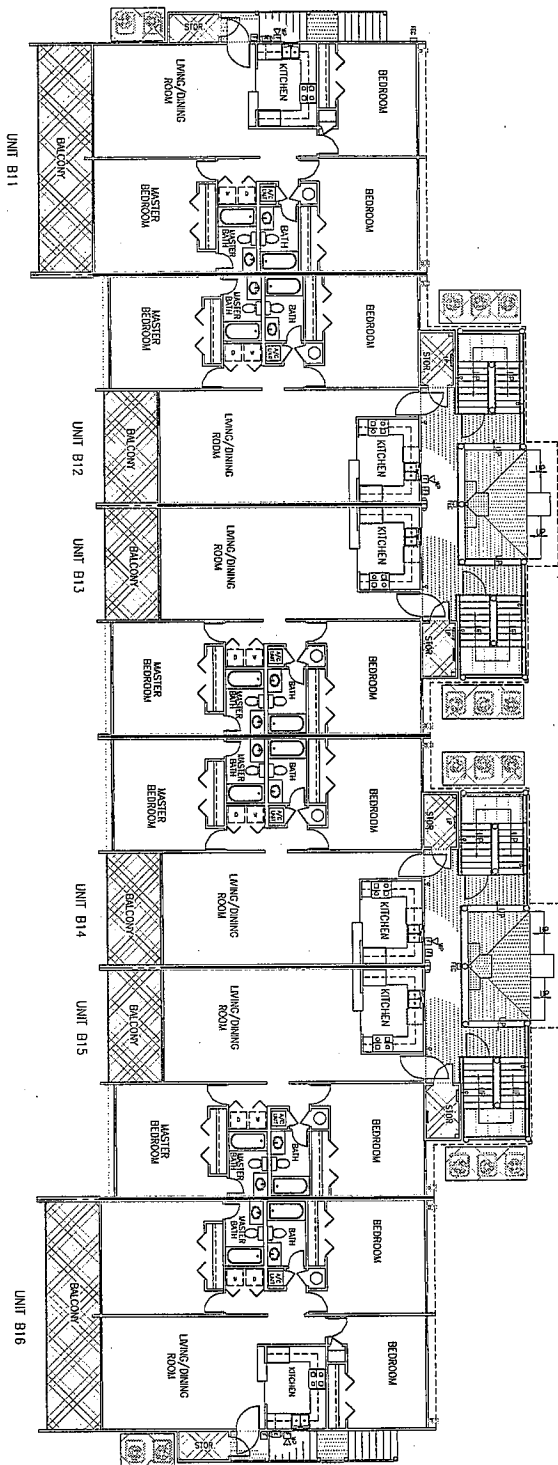
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- UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

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SUNDOWN RIVERSIDE, A CONDOMINIUM PERDIDO KEY, FLORIDA OVERALL PLAN - BUILDING B FIRST FLOOR



Date: 4/8/2009

LEGEND

UNIT DIVISION SEE LARGE SCALE FLOOR PLANS

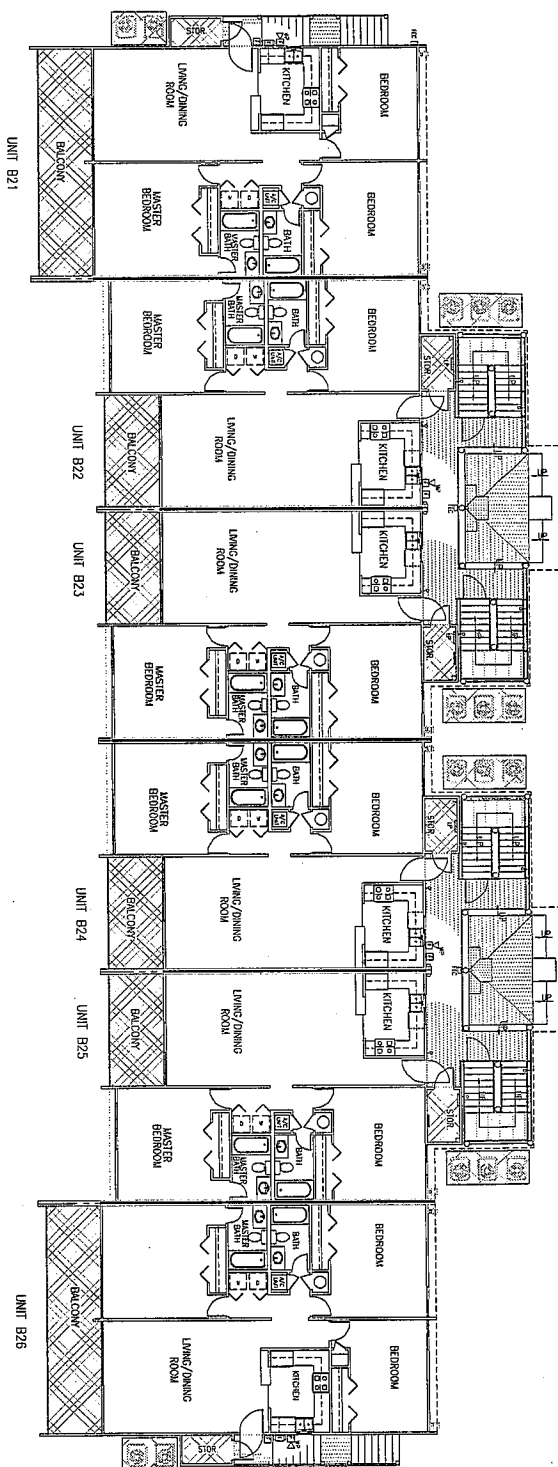
LIMITED COMMON ELEMENTS

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SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING B
SECOND FLOOR



FLOOR PLAN



Date: 4/8/2009

LEGEND

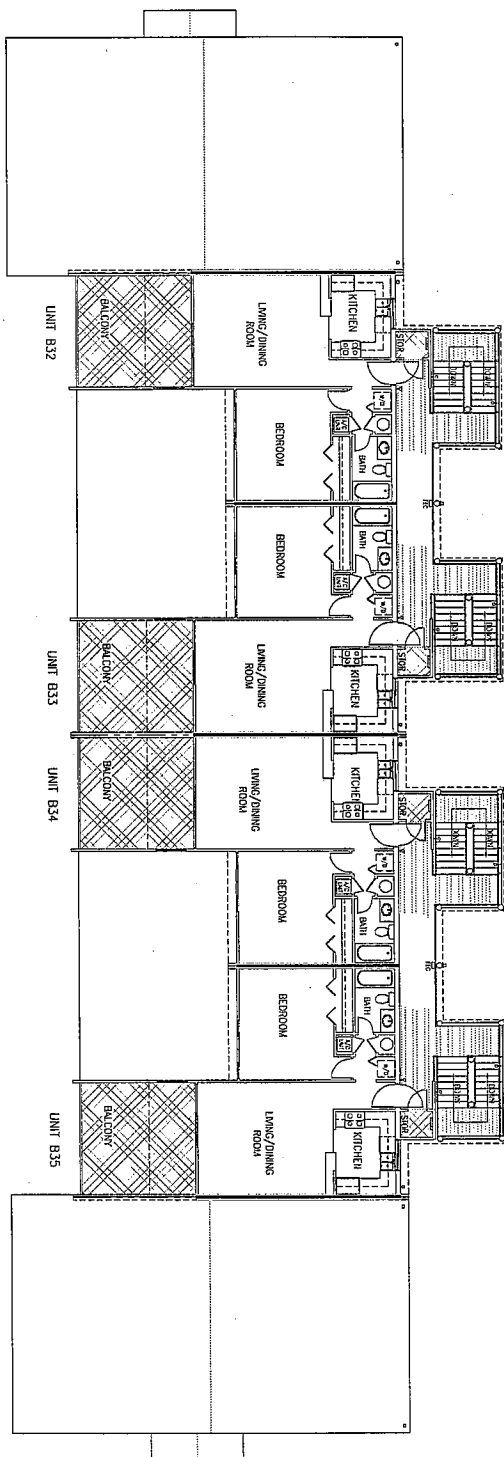
-  LIMITED COMMON ELEMENTS
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 (850) 439-9110

SUNDOWN RIVERSIDE, A CONDOMINIUM **PERDIDO KEY, FLORIDA** **OVERALL PLAN - BUILDING B** **THIRD FLOOR**



FLOOR PLAN



LEGEND

- UNITED COMMON ELEMENTS
- UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

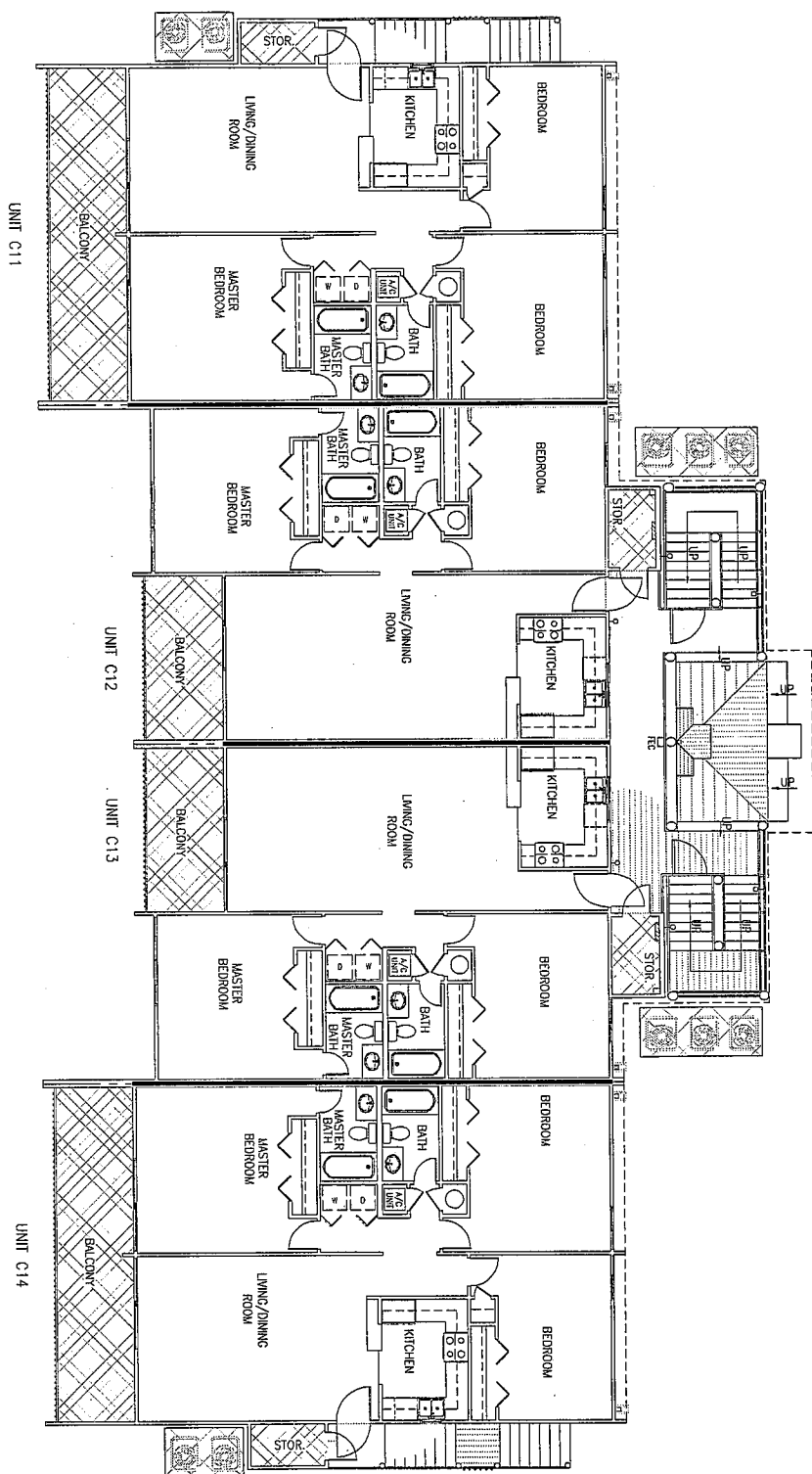
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1001 N. 12th AVENUE
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 (850) 439-9110

Date: 4/8/2009

SUNDOWN RIVERSIDE, A CONDOMINIUM PERDIDO KEY, FLORIDA OVERALL PLAN - BUILDING C FIRST FLOOR



FLOOR PLAN



Date: 4/8/2009

LEGEND

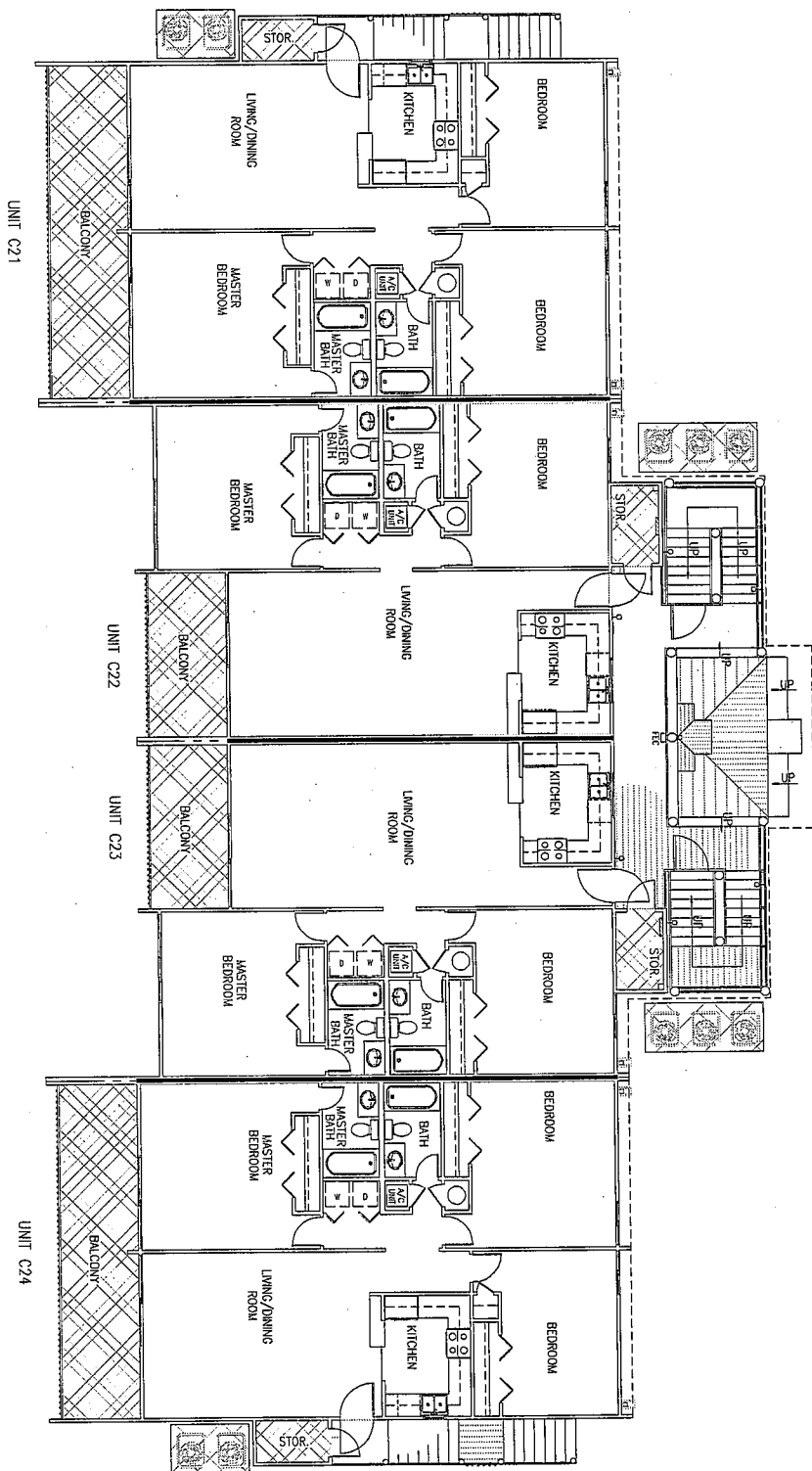
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- UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

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1001 N. 12TH AVENUE
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 (850) 439-9110

SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING C
SECOND FLOOR



FLOOR PLAN



Date: 4/8/2009

LEGEND

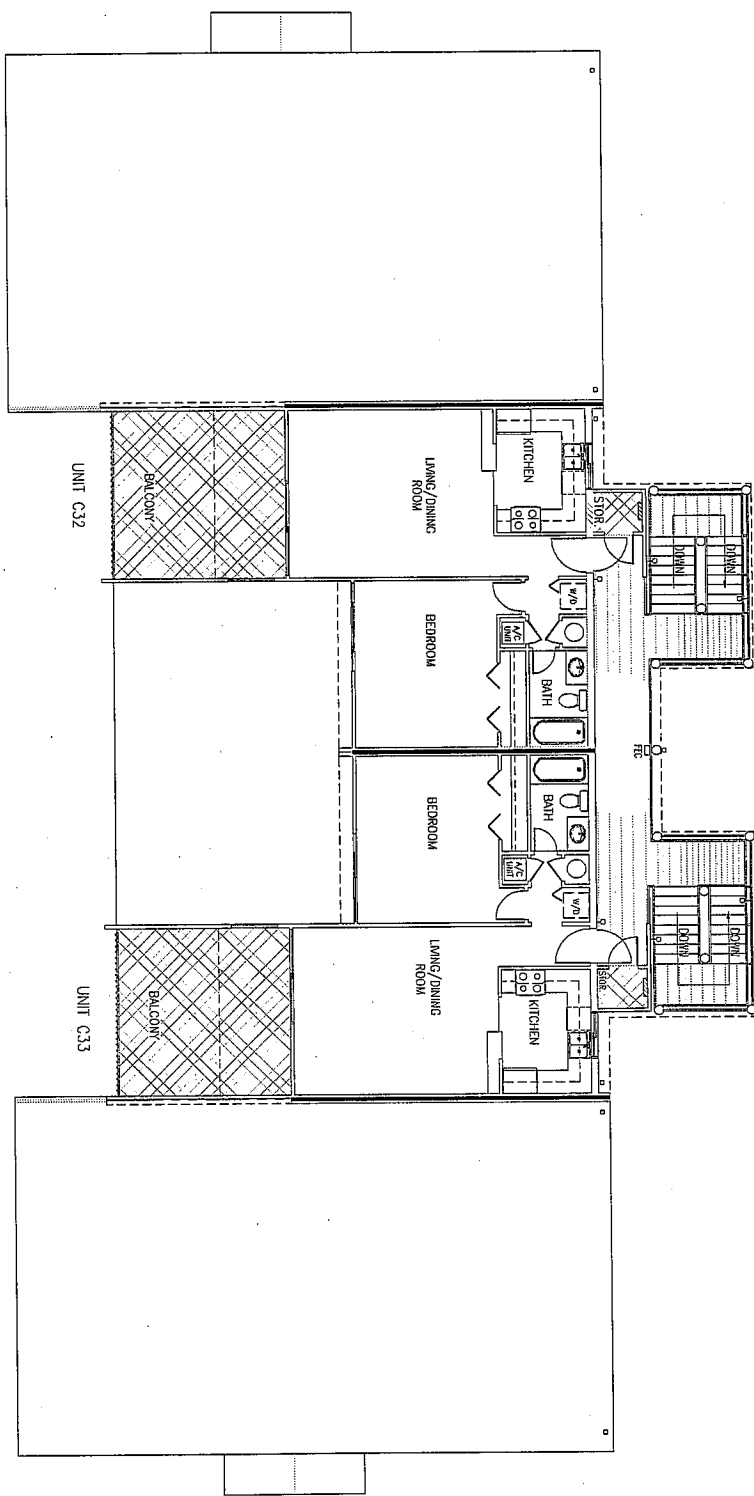
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SUNDOWN RIVERSIDE, A CONDOMINIUM
 PERDIDO KEY, FLORIDA
 OVERALL PLAN - BUILDING C
 THIRD FLOOR



FLOOR PLAN



LEGEND

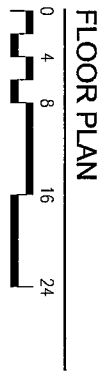
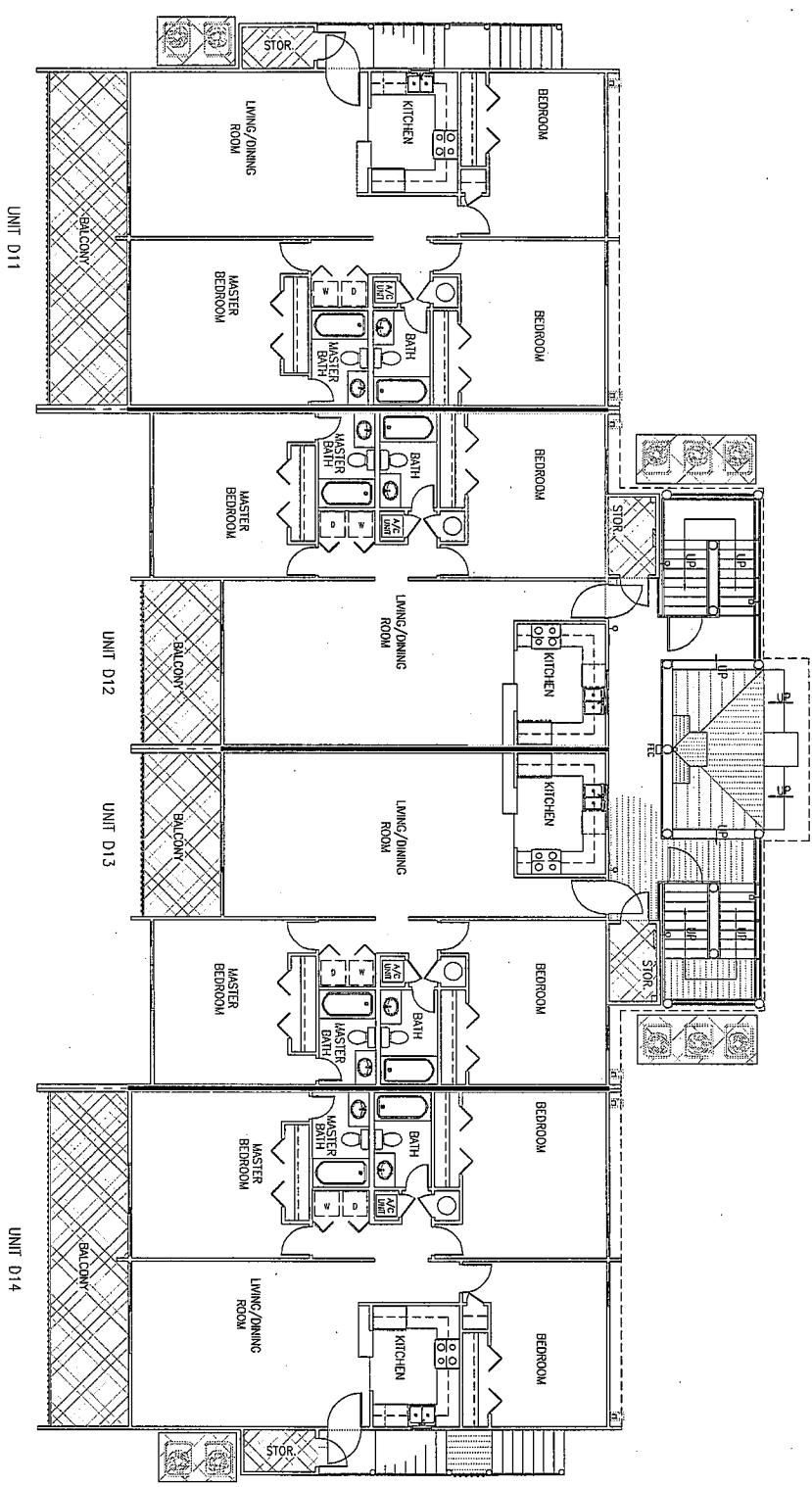
- LIMITED COMMON ELEMENTS
- UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC.
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 (850) 439-9710

Date: 4/8/2009

SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING D
FIRST FLOOR



Date: 4/8/2009

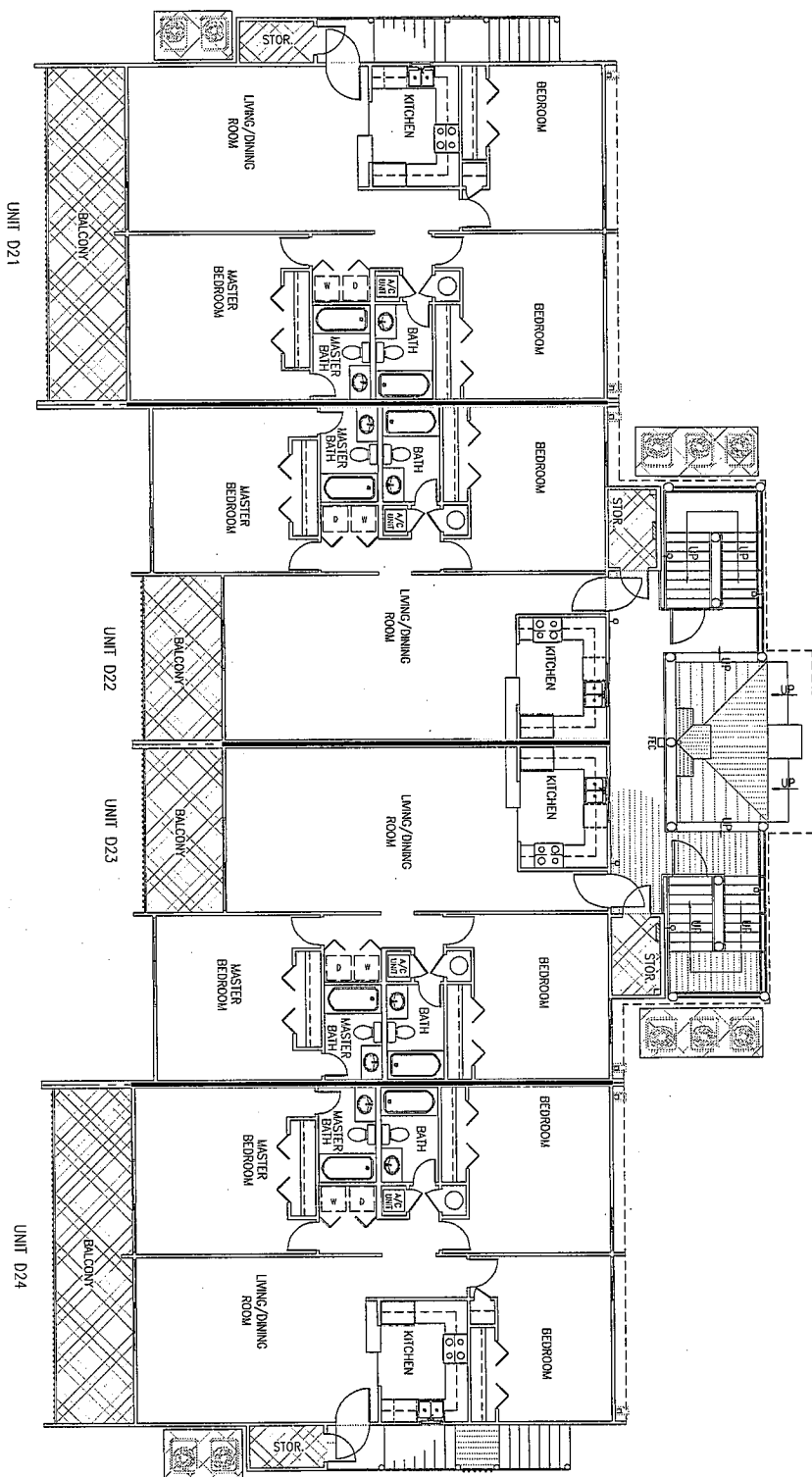
LEGEND

- UNITED COMMON ELEMENTS
- UNIT DIVISION, SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

PINDER-MARTIN ASSOCIATES, INC.
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SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING D
SECOND FLOOR



FLOOR PLAN



Date: 4/8/2009

LEGEND

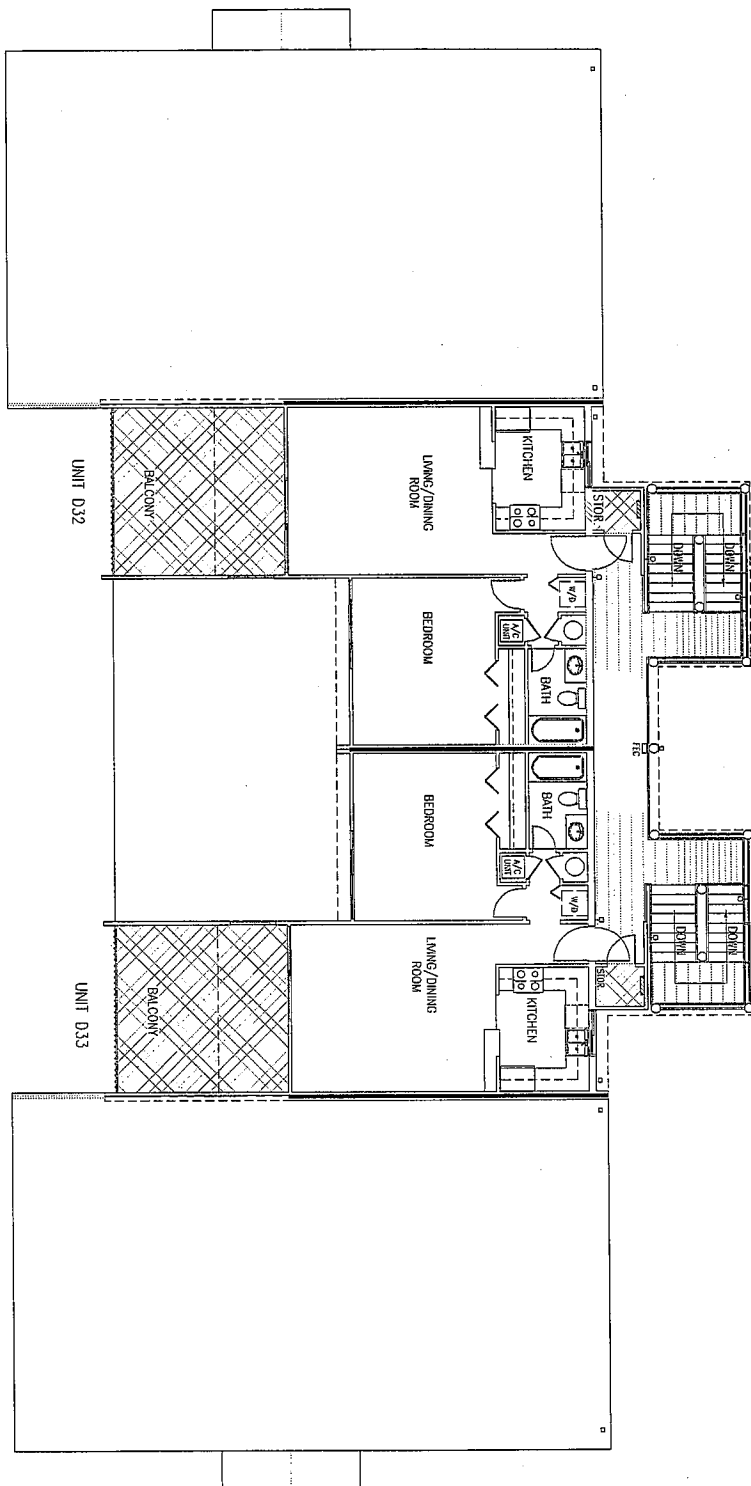
-  LIMITED COMMON ELEMENTS
-  UNIT DIVISION - SEE LARGE SCALE FLOOR PLANS

PREPARED BY:

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SUNDOWN RIVERSIDE, A CONDOMINIUM
PERDIDO KEY, FLORIDA
OVERALL PLAN - BUILDING D
THIRD FLOOR



LEGEND

-  LIMITED COMMON ELEMENTS
-  UNIT DIVISION. SEE LARGE SCALE FLOOR PLANS

FLOOR PLAN



Date: 4/8/2009

PREPARED BY:

PINDER-MARTIN ASSOCIATES INC.
 ARCHITECTURE CONSULTING
 1001 N. 12th AVENUE
 PENSACOLA, FL 32501
 (850) 439-9110

Exhibit "3"

SUNDOWN RIVERSIDE, A CONDOMINIUM

**Fractional Shares of Ownership of Common Elements
and Common Surplus and of Sharing of Common Expenses**

<u>Unit No.</u>	<u>Unit Type</u>	<u>Fractional Share</u>	<u>Unit Area</u>
A-11	Three	.025769	1,237
A-12	Two	.022416	1,076
A-13	Two	.022416	1,076
A-14	Three	.025769	1,237
A-21	Three	.025769	1,237
A-22	Two	.022416	1,076
A-23	Two	.022416	1,076
A-24	Three	.025769	1,237
A-32	One	.013937	669
A-33	One	.013937	669
B-11	Three	.025769	1,237
B-12	Two	.022416	1,076
B-13	Two	.022416	1,076
B-14	Two	.022416	1,076
B-15	Two	.022416	1,076
B-16	Three	.025769	1,237
B-21	Three	.025769	1,237
B-22	Two	.022416	1,076
B-23	Two	.022416	1,076

B-24	Two	.022416	1,076
B-25	Two	.022416	1,076
B-26	Three	.025769	1,237
B-32	One	.013937	669
B-33	One	.013937	669
B-34	One	.013937	669
B-35	One	.013937	669
C-11	Three	.025769	1,237
C-12	Two	.022416	1,076
C-13	Two	.022416	1,076
C-14	Three	.025769	1,237
C-21	Three	.025769	1,237
C-22	Two	.022416	1,076
C-23	Two	.022416	1,076
C-24	Three	.025769	1,237
C-32	One	.013937	669
C-33	One	.013937	669
D-11	Three	.025769	1,237
D-12	Two	.022416	1,076
D-13	Two	.022416	1,076
D-14	Three	.025769	1,237
D-21	Three	.025769	1,237
D-22	Two	.022416	1,076
D-23	Two	.022416	1,076
D-24	Three	.025769	1,237

D-32	One	.013937	669
D-33	One	.013937	669

Total No. of Units 46

Total Sq. Ft. 48,002

Exhibit "4"

BY-LAWS OF SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.

Exhibit "4"

**BY-LAWS
OF
SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.**

*A corporation not for profit organized
under the laws of the State of Florida*

1. Identity. These are the By-Laws of **SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.** (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation.
 - 1.1 Fiscal Year. The fiscal year of the Association shall be the twelve (12) month period commencing January 1st and terminating December 31st of each year. The provisions of this subsection 1.1 may be amended at any time by a majority of the Board of Directors of the Association.
 - 1.2 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. Definitions. For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration for **SUNDOWN RIVERSIDE, A CONDOMINIUM**, unless herein provided to the contrary, or unless the context otherwise requires.
3. Members.
 - 3.1 Annual Meeting. The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting, and provided that the location of the annual meeting shall be within 45 miles of the condominium. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors, and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of October following the year in which the Declaration is filed.
 - 3.2 Special Meetings. Special members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to those agenda items specifically identified in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing: (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 10.1 of these By-Laws; and (ii) as to special meetings regarding recall of Board members, reference should be made to Section 4.3 of these By-Laws.

- 3.3 Participation by Unit Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit a Unit Owner to speak on such items in its discretion. Every Unit Owner who desires to speak at a meeting, may do so, provided that the Unit Owner has filed a written request with the Secretary of the Association not less than twenty four (24) hours prior to the scheduled time for commencement of the meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. Any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:
- (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;
 - (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting;
 - (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
 - (d) At least forty eight (48) hours (or twenty four (24) hours with respect to a Board meeting) prior written notice shall be given to the Secretary of the Association by any Unit Owner desiring to make an audio or video taping of the meeting.
- 3.4 Notice of Meeting; Waiver of Notice. Notice of a meeting of members (annual or special), stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of an annual or special meeting shall be hand delivered, electronically transmitted or sent by regular mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as last furnished to the Association by the Unit Owner. However, if a Unit is owned by more than one (1) person, the Association shall provide notice, for meetings and all other purposes, to that one address identified as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or if the Owners disagree, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice for either special or annual meetings (other than election meetings), which notice shall incorporate an identification of agenda items, shall be effected not less than fourteen (14) continuous days prior to the date of the meeting. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of members' meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the Unit Owners on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association, if any. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda

must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member), either in person or by proxy, shall constitute such member's waiver of notice of such meeting, and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

An officer of the Association, or the manager or other person providing notice of the meeting shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association, affirming that notices of meetings were posted and mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the appropriate address for such Unit Owner. No other proof of notice of a meeting shall be required.

- 3.5 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy (limited or general), of persons entitled to cast in excess of thirty three and one third percent (33 1/3%) of the votes of members entitled to vote at the subject meeting.

3.6 Voting.

- (a) Number of Votes. Except as provided in Section 3.11 hereof, in any meeting of members, the Owners of each Unit shall be entitled to cast the number of votes designated for their Unit as set forth in the Articles, except that no voting interest or consent right allocated to a unit owned by the association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the votes entitled to be cast by the members and not a majority of the members themselves and shall further mean more than fifty percent (50%) of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.
- (c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of members. If a Unit is owned by more than one (1) person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation, partnership, limited liability company, trust or any other lawful entity, the person entitled to cast the vote for the Unit shall be designated by a certificate

signed by persons having lawful authority to bind the corporation, partnership, limited liability company, trust or other lawful entity and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

- 3.7 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as specifically provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division. Limited proxies shall be permitted to the extent permitted by the Act. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. 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. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person. If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.
- 3.8 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.9 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
- (a) Collect any ballots not yet cast;
 - (b) Call to order by President;
 - (c) Appointment by the President of a chairman of the meeting (who need not be a member or a Director);
 - (d) Appointment of inspectors of election;

- (e) Counting of Ballots for Election of Directors;
- (f) Proof of notice of the meeting or waiver of notice;
- (g) Reading of minutes;
- (h) Reports of officers;
- (i) Reports of committees;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

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

- 3.10 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or which may be taken at any annual or special meeting of members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which all members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one (1) or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

4. Directors.

- 4.1 Membership. The affairs of the Association shall be governed by a Board, consisting of not less than three (3) nor more than five (5) Directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as provided herein, from time to time upon majority vote of the membership. Directors must be natural persons who are eighteen (18) years of age or

older. Any person who has been convicted of any felony by any court of record in this state or a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this state, is not eligible for Board membership (provided, however, that the validity of any Board action is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony) unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board. Co-owners of a unit are not eligible to serve as members of the board at the same time. A person who has been suspended or removed from the board by the Division pursuant to s. 718.501, Florida Statutes, or who is more than 90 days delinquent in the payment of any fee or assessment is not eligible to for board membership. Directors may not vote at Board meetings by proxy or by secret ballot. A director who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action.

- 4.2 Election of Directors. Election of Directors shall be held at the annual members' meeting, except as herein provided to the contrary. Not less than sixty (60) days prior to a scheduled election, the Association shall mail, deliver or electronically transmit to each Unit Owner entitled to vote, a first notice of the date of election. Any Unit Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Secretary of the Association not less than forty (40) days prior to the scheduled election. Together with the notice of meeting and agenda sent in accordance with Section 3.4 above, the Association shall then, mail, deliver or electronically transmit a second notice of the meeting, along with a completed certification form provided by the Division attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of Chapter 718, Florida Statutes and the applicable rules of the Division, not less than fourteen (14) continuous days prior to the date of the meeting, 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 8-1/2 inches by 11 inches furnished by the candidate, which must be furnished by the candidate to the Association not less than thirty five (35) days before the election, along with the signed certification form provided for in this subparagraph, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association. The Association is not liable 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.

The election of Directors shall be by written ballot or voting machine. Proxies shall in no event be used in electing the Board at general elections or to fill vacancies caused by resignation or otherwise, provided, however, that limited proxies may be used to fill a vacancy resulting from the recall of a Director, in the manner provided by the rules of the Division. Elections shall be decided by a plurality of those ballots and votes cast. There shall be no quorum requirement, however at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election of members of the Board. There shall be no cumulative voting.

Notwithstanding the provisions of this Section 4.2, an election is not required unless more candidates file notices of intent to run than vacancies exist on the Board.

4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members (as addressed in subsection (b) below), vacancies in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors at any

Board meeting (even if the remaining Directors constitute less than a quorum), with the replacement Director serving the balance of the term of the vacating Board member.

- (b) Any Director elected by the members may be removed by recall with or without cause by concurrence of a majority of the voting interests of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of all voting interests. Where unit owners are seeking to recall at least a majority of the board, the unit owners voting for recall shall be entitled to designate replacement board members in the course of the recall. If the unit owners seek to recall less than a majority of the board, the vacancy or vacancies may be filled by the remaining board members, even if less than a quorum of the board remains. The conveyance of all Units owned by a Director in the Condominium (other than Directors who were not Unit Owners) shall constitute the resignation of such Director.
- (c) If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these By-Laws, and the remaining Directors fail to fill the vacancy by appointment of a Director in accordance with applicable law, then any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall furnish by personal delivery or by certified mail to the Association and to each other unit owner and post in a conspicuous place on the Condominium Property a notice complying with the requirements of s. 718.1124, Florida Statutes, describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws and the court relieves the receiver of the appointment.

- 4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall be for a period of one year and shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to this subparagraph, such board member whose term has expired shall be automatically reappointed to the board and need not stand for reelection.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment. The Directors calling the organizational meeting shall give at least three (3) days advance notice thereof, stating the time and place of the meeting.
- 4.6 Meetings. Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Meetings of the Board of Directors may be held by telephone conference, with those Directors attending by telephone counted toward the quorum requirement, provided that a telephone speaker must be used so that the conversation of those Directors attending by telephone may be heard by the Directors and any Unit Owners attending such meeting in person. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the

meeting. Meetings of the Board of Directors, and any Committee thereof at which a quorum of the members of that Committee are present shall be open to all Unit Owners. Any Unit Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Division. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. If 20 percent of the total voting interests petition the board to address an item of business, the board, shall at its next regular board meeting or at a special meeting, but not later than 60 days after the board's receipt of the petition, place the item on the agenda. Adequate notice of all board 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, except in the event of an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Notwithstanding the foregoing, written notice of any meeting of the Board at which nonemergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed or approved, shall be mailed, delivered or electronically transmitted to all Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) continuous days prior to the meeting. Evidence of compliance with this fourteen (14) continuous day notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association. Notice of any meeting at which regular or special assessments are to be considered for any reason shall specifically state that assessments will be considered and the nature, estimated cost, and description of the purpose or purposes for such assessments. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of Board and/or Committee meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the Board on the Condominium Property, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association, if any. However, if broadcast notice is used in lieu of a notice posted physically on the Condominium Property, the notice and agenda must be broadcast at least four (4) times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors or where required by the Act. A Director or member of a Committee of the Board of Directors may submit in writing his or her agreement or disagreement with any action taken at a meeting that such individual did not attend. This agreement or disagreement may not be used for purposes of creating a quorum.

- 4.7 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.
- 4.8 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is

present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

- 4.9 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required (e.g., with respect to budget adoption).
- 4.10 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not be used as a vote for or against any particular action taken and shall not allow the applicable Director to be counted as being present for purposes of quorum.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other Unit Owner to preside).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.
- Such order may be waived in whole or in part by direction of the presiding officer.
- 4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 4.14 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable.
- 4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall initially consist of five (5) Directors (the "Initial Directors"), all of whom shall be appointed by Sundown Owners Association, Inc., a Florida corporation not for profit, as termination trustee, pursuant to the Plan and Section 718.117, Florida Statutes, for the condominium

previously known as Sundown, a Condominium, Perdido Key (the "Trustee"). Within seventy-five (75) days after the Trustee appoints the Initial Directors, the Association shall call, and give not less than sixty (60) days' notice of, an election to replace all of the Initial Directors in accordance with the procedures set forth in Section 4.2 hereof. Upon the election of such Director(s), the President of the Board shall forward to the Division of Florida Condominiums, Time Shares, and Mobile Homes the name and mailing address of the Director(s) elected.

5. Authority of the Board.

5.1 Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining all Common Elements and the Association Property.
- (b) Determining the expenses required for the operation of the Association and the Condominium.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements and the Association Property.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium and Association Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 14 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described herein and in the Declaration.
- (g) Purchasing, leasing or otherwise acquiring Units or other property, including, without limitation, Units at foreclosure or other judicial sales, all in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium and Association Property.
- (k) Making repairs, additions and improvements to, or alterations of, Condominium Property and Association Property, and repairs to and restoration of Condominium and Association Property, in accordance with the provisions of the Declaration after damage or destruction

by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.

- (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be levied. No fine may exceed \$100.00 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, provided however, that no such fine shall in the aggregate exceed \$1,000.00. No fine shall become a lien upon a Unit.
- (n) Purchasing or leasing Units for use by resident superintendents and other similar persons or for the general use and enjoyment of the Unit Owners.
- (o) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of Common Elements (if the need for the funds is unanticipated) or the acquisition of real property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$500,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph 5.1(o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit. Notwithstanding the foregoing, the restrictions on borrowing contained in this subparagraph 5.1(o) shall not apply if such indebtedness is entered into for the purpose of financing insurance premiums and/or for the purpose of responding to emergency situations which may arise with respect to the Common Elements and/or Condominium Property, which action may be undertaken solely by the Board of Directors, without requiring a vote of the Unit Owners.
- (p) Subject to the provisions of Section 5.2 below, contracting for the management and maintenance of the Condominium and Association Property and authorizing a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (q) At its discretion, but within the parameters of the Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Executing all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit Owner by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (s) Responding to Unit Owner inquiries in accordance with Section 718.112(2)(a)2, F.S.
- (t) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.

5.2 Contracts. As provided by s. 718.3026, Florida Statutes, any contract which is not to be fully performed within one (1) year from the making thereof, for the purchase, lease or renting of materials or equipment to be used by the Association in accomplishing its purposes, and all contracts for the provision of services, shall be in writing. Where a contract for purchase, lease or renting materials or equipment, or for the provision of services, requires payment by the Association on behalf of the Condominium in the aggregate exceeding five percent (5%) of the total annual budget of the Association (including reserves), the Association shall obtain competitive bids for the materials, equipment or services. Nothing contained herein shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association and contracts for attorney, accountant, architect, community association manager, engineering and landscape architect services shall not be subject to the provisions hereof. Further, nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency; nor shall the provisions hereof apply if the business entity with which the Association desires to contract is the only source of supply within the County. As to any contract or other transaction between an association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, the association shall comply with the requirements of s. 617.0832, Florida Statutes, the disclosures required by s. 617.0832, Florida Statutes, shall be entered into the written minutes of the meeting, and approval of the contract or other transaction shall require an affirmative vote of two-thirds of the directors present.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one (1) office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one (1) office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers must be Unit Owners (or authorized representatives of corporate/partnership/trust Unit Owners).
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the Vice President of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a Treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of Treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. Fiduciary Duty.

- (1) The officers and Directors of the Association, as well as any manager employed by the Association, have a fiduciary relationship to the Unit Owners. No officer, Director or manager shall solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer, Director or manager who knowingly so solicits, offers to accept or accepts any thing or service of value shall, in addition to all other rights and remedies of the Association and Unit Owners, be subject to a civil penalty in accordance with the Act. Notwithstanding the foregoing, this paragraph shall not prohibit an officer, Director or manager from accepting services or items received in connection with trade fairs or education programs.
- (2) An officer, director, or agent of the Association shall discharge his or her duties in good faith, with the care of an ordinarily prudent person in a like position would exercise under similar circumstances, and

in a manner he or she reasonably believes to be in the interests of the Association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0830, Florida Statutes, if such person breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of the criminal law as provided in s. 617.0830, Florida Statutes; constitutes a transaction from which the person derived an improper personal benefit, either directly or indirectly; or constitute recklessness or an action or omission that was in bad faith, with malicious intent, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

8. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.
9. Resignations. Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective.
10. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

10.1 Budget.

- (a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget of estimated revenues and expenses for all Condominiums governed and operated by the Association (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of such Condominium(s) and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, if the Association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements, the budget or a schedule attached thereto shall show amounts budgeted therefor. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing 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 \$10,000.00. The amount of reserves shall be computed by means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost of each reserve item. The Association may adjust replacement and reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the limited proxy: **WAIVING OF RESERVES, IN**

WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. 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 any other purposes is approved in advance by a majority vote at a duly called meeting of the Association.

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

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be hand delivered, mailed or electronically transmitted to each Unit Owner (at the address last furnished to the Association) not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement and such affidavit shall be filed among the official records of the Association.
- (ii) Special Membership Meeting. If the Board of Directors adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed one hundred fifteen percent (115%) of such Assessments for the preceding fiscal year, the Board of Directors shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board of Directors receives, within twenty-one (21) days following the adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests. The special meeting shall be conducted within sixty (60) days following the adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board of Directors shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board of Directors shall take effect as scheduled.
- (iii) Determination of Budget Amount. Any determination of whether assessments exceed one hundred fifteen percent (115%) of assessments for the preceding fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board of Directors does not expect to be incurred on a regular or annual basis, or assessments for betterments to the Condominium Property.

- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 10.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection.

- 10.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 10.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.
- 10.3 Special Assessments and Assessments for Capital Improvements. Special Assessments and Capital Improvement Assessments (as defined in the Declaration) shall be levied as provided in the Declaration and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in the notice of adoption of same unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association, except as provided by s. 718.1265, Florida Statutes. The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by Section 718.111(11), Florida Statutes, approved in accordance with the condominium documents, shall be set forth in a written notice of such assessment sent or delivered to each Unit Owner which notice shall also specify the nature, estimate cost, and description of the purpose of such assessment. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future assessments.
- 10.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida, which bank or banks must be insured by the FDIC, as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. In addition, a separate reserve account should be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes, provided that the funds so commingled shall be accounted for separately and the combined account balance of

such commingled funds may not, at any time, be less than the amount identified as reserve funds in the combined account.

- 10.5 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate the balance of the current budget years' Assessments upon thirty (30) days' prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the current budget years' Assessments shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the Unit Owner, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.
- 10.6 Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- 10.7 Accounting Records and Reports. The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within ninety (90) days following the end of the fiscal year, the Association shall prepare and complete, or contract for the preparation and completion of a financial report for the preceding fiscal year (the "Financial Report"). Within twenty-one (21) days after the final Financial Report is completed by the Association, or received from a third party, but not later than one hundred twenty (120) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, a copy of the Financial Report to each Unit Owner, or a notice that a copy of the Financial Report will be mailed or hand delivered to the Unit Owner, without charge, upon receipt of a written request from the Unit Owner.

The Financial Report shall be prepared in accordance with the rules adopted by the Division. The type of Financial Report to be prepared shall, unless modified in the manner set forth below, be based upon the Association's total annual revenues, as follows:

- (a) **REPORT OF CASH RECEIPTS AND EXPENDITURES** – if the Association's revenues are less than \$100,000.00 or if the Association operates less than fifty (50) Units (regardless of revenue) [or, if determined by the Board, the Association may prepare any of the reports described in subsections (b), (c) or (d) below in lieu of the report described in this section (a)].

- (b) COMPILED FINANCIAL STATEMENTS – if the Association's revenues are equal to or greater than \$100,000.00, but less than \$200,000.00 [or, if determined by the Board, the Association may prepare any of the reports described in subsections (c) or (d) below in lieu of the report described in this section (b)].
- (c) REVIEWED FINANCIAL STATEMENTS – if the Association's revenues are equal to or greater than \$200,000.00, but less than \$400,000.00 [or, if determined by the Board, the Association may prepare the report described in subsection (d) below in lieu of the report described in this section (c)].
- (d) AUDITED FINANCIAL STATEMENTS – if the Association's revenues are equal to or exceed \$400,000.00.

A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

If approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may prepare or cause to be prepared: (i) a report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement; (ii) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or (iii) a report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement. Such meeting and approval must occur prior to the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year if so provided in the vote taken.

10.8 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration.

- 11. Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
- 12. Parliamentary Rules. Except when specifically or impliedly waived by the chairman of a meeting (either of members or Directors), Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Robert's Rules shall not be made so as to frustrate the will of the persons properly participating in said meeting.
- 13. Amendments. Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner:

- 13.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
- 13.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. The approval must be:
- (a) by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than sixty six and two thirds percent (66-2/3%) of the entire Board of Directors; or
 - (b) by not less than eighty percent (80%) of the votes of the members of the Association voting in person or by proxy at a meeting at which a quorum has been attained.
- 13.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the mortgagees of Units without the consent of said mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Subsection shall be valid.
- 13.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
14. Rules and Regulations. Attached hereto as **Schedule "A"** and made a part hereof are initial rules and regulations concerning the use of portions of the Condominium and Association Property. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof.
15. Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Division for nonbinding arbitration pursuant to s. 718.1255, Florida Statutes. The arbitration shall be conducted according to rules promulgated by the Division and before arbitrators employed by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent

jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

16. Written Inquiries. When a Unit Owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Unit Owner within thirty (30) days of receipt of such inquiry and more particularly in the manner set forth in Section 718.112(2)(a)2, Florida Statutes. The Association may, through its Board, adopt reasonable rules and regulations regarding the frequency and manner of responding to Unit Owner inquiries.
17. Official Records. From the inception of the Association, the Association shall maintain for the condominium, a copy of each of the following, where applicable, which shall constitute the official records of the Association:
 - (a) The plans, permits, and warranties pursuant to Section 718.301(4) of the Act;
 - (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;
 - (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
 - (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
 - (e) A copy of the current Rules and Regulations of the Association;
 - (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years;
 - (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and the numbers designated by Unit Owners for receiving notices sent by electronic transmission of those Unit Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by Unit Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association shall not be liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices;
 - (h) All current insurance policies of the Association and of all Condominiums operated by the Association;
 - (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
 - (j) Bills of Sale or transfer for all property owned by the Association;
 - (k) Accounting records for the Association and the accounting records for the Condominium. All accounting records shall be maintained for a period of not less than seven (7) years. No person

shall knowingly or intentionally deface or destroy accounting records required to be maintained herein. The accounting records shall include, but not be limited to:

- (i) Accurate, itemized, and detailed records for all receipts and expenditures.
- (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
- (iii) All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
- (iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained by the association.
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates;
- (m) All rental records where the Association is acting as agent for the rental of Units;
- (n) A copy of the inspection report as provided for in s. 718.301(4)(p), Florida Statutes, and
- (o) All other records of the Association not specifically listed above which are related to the operation of the Association.

The official records of the Association shall be maintained in Escambia County, Florida, for at least 7 years unless otherwise provided herein, and within twenty five (25) miles of the Condominium. The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member and shall be made available to a Unit Owner within five (5) working days after receipt of a written request by the Board or its designee. The association is authorized to offer the option of making the records of the association available to a unit owner either electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, of the Association member. The Association may adopt reasonable rules regarding the time, location, notice and manner of record inspections and copying. The failure of an Association to provide official records to a Unit Owner or his authorized representative within ten (10) working days after receipt of a written request therefor shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, Articles, By-Laws and rules, and all amendments to the foregoing, as well as the Question and Answer Sheet and year-end financial information required by the Act, to ensure their availability to Unit Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those persons requesting same. Notwithstanding the provisions of this Section 17, the following records shall not be accessible to Unit Owners:

- (i) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, and any record protected by the work-product privilege including any record prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental

impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation or imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

- (ii) Information obtained by an Association in connection with the approval of the lease, sale or other transfer of a Unit.
 - (iii) Medical records of Unit Owners.
 - (iv) Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of any person.
18. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Units to the applicable condominium fire and life safety code.
19. Provision of Information to Purchasers or Lienholders. The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Act to be made available or disclosed. The Association or its authorized agent shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or the current Unit Owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee shall not exceed \$150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with the Association's response.
20. Electronic Transmission. For purposes hereof, "electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers. Notwithstanding the provision for electronic transmission of notices by the Association, same may be only be sent to Unit Owners that consent to receipt of Association notices by electronic transmission (and only for long as such consent remains in effect). Further, in no event may electronic transmission be used as a method of giving notice of a meeting called in whole or in part regarding the recall of a Director.
21. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders. To the extent not otherwise provided for or addressed in these By-Laws, the By-Laws shall be deemed to include the provisions of Section 718.112(2)(a) through (m) of the Act.
22. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

The foregoing was adopted as the By-Laws of **SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.**, a corporation not for profit under the laws of the State of Florida, as of the ____ day of _____, 2009.

Approved:

, President

, Secretary

Exhibit "5"

ARTICLES OF INCORPORATION FOR SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.

Exhibit "5"

ARTICLES OF INCORPORATION
FOR
SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.

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TALLAHASSEE, FLORIDA

The undersigned incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

ARTICLE 1
NAME

The name of the corporation shall **SUNDOWN RIVERSIDE CONDOMINIUM ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2
OFFICE

The principal office and mailing address of the Association shall be at 16470 Perdido Key Drive, Pensacola, Florida 32507, or at such other place as may be subsequently designated by the Board. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act.

ARTICLE 3
PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Escambia County, Florida, and known as **SUNDOWN RIVERSIDE, A CONDOMINIUM** (the "Condominium").

ARTICLE 4
DEFINITIONS

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

ARTICLE 5
POWERS

The powers of the Association shall include and be governed by the following:

- 5.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.
- 5.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in

conflict with the Act), and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

- (a) To make and collect Assessments and other charges against members as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.
- (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
- (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and/or Association Property, and other property acquired or leased by the Association.
- (d) To purchase insurance upon the Condominium Property and Association Property and insurance for the protection of the Association, its officers, Directors and Unit Owners.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Association Property and for the health, comfort, safety and welfare of the Unit Owners.
- (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
- (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property and Association Property.
- (h) To contract for the management and maintenance of the Condominium Property and/or Association Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (i) To employ personnel to perform the services required for the proper operation of the Condominium and the Association Property.
- (j) To (i) operate and maintain the surface water management system in accordance with the permit issued by the District, (ii) carry out, maintain, and monitor any required wetland mitigation tasks and (iii) maintain copies of all permitting actions with regard to the District.
- (k) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Unit Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit,

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by acceptance of a lien on said Unit, appoints and designates the President of the Association as such Unit Owner's and mortgagee's agent and attorney-in-fact to execute, any and all such documents or consents.

- 5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, Directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).
- 5.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 6

MEMBERS

- 6.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.
- 6.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 6.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each Unit. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast the aggregate number of votes attributable to all Units owned.
- 6.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

ARTICLE 7

TERM OF EXISTENCE

The Association shall have perpetual existence, unless dissolved in accordance with applicable law.

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ARTICLE 8
INCORPORATOR

The name and address of the Incorporator of this Corporation is:

NAME

ADDRESS

SUNDOWN OWNERS ASSOCIATION, INC.,
a Florida corporation
not for profit, as Termination Trustee
pursuant to the Plan of Termination of
Sundown, A Condominium, Perdido Key,
Recorded December 23, 2008.

16470 Perdido Key Drive
Pensacola, FL 32507

ARTICLE 9
OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board are as follows:

President:

Deborah Sneed

9798 Potomac Ridge Drive
Mobile, AL 36695

Vice President:

Don Gutelius

13005 Stone Lake Drive
Folsom, LA 70437

Secretary/Treasurer:

David Siek

2668 Shadow Bluff Drive
Marietta, GA 30062

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TALLAHASSEE, FLORIDA

ARTICLE 10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of Directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3), nor more than nine (9) Directors. Directors need not be members of the Association.
- 10.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 10.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws.

Directors may be removed and vacancies on the Board shall be filled in the manner provided by the By-Laws.

10.4 Term of First Directors. The Trustee shall appoint the members of the first Board and their replacements who shall hold office for the periods described in the By-Laws.

10.5 First Directors. The names and addresses of the members of the first Board who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Andrew Svirsky	2316 Holiday Drive New Orleans, LA 70114
Deborah Sneed	9798 Potomac Ridge Drive Mobile, AL 36695
David Siek	2668 Shadow Bluff Drive Marietta, GA 30062
Don Gutelius	13005 Stone Lake Drive Folsom, LA 70437
Kenneth L. Heck, Jr.	101 Bienville Boulevard Dauphin Island, AL 36528

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10.6 Standards. A Director shall discharge his or her duties as a Director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his or her duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or a Committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a Director, or any failure to take action, if he performed the duties of his or her office in compliance with the foregoing standards.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he or she is or was a Director, officer, employee or agent (each, an "Indemnatee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding

by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

- 11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a Director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this Article 11 in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- 11.3 Indemnification for Expenses. To the extent that a Director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.
- 11.4 Determination of Applicability. Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, or agent is proper under the circumstances because he or she has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made:
- (a) By the Board by a majority vote of a quorum consisting of Directors who were not parties to such proceeding;
 - (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board (in which Directors who are parties may participate) consisting solely of two (2) or more Directors not at the time parties to the proceeding;
 - (c) By independent legal counsel:
 - 1. selected by the Board prescribed in paragraph 11.4(a) or the committee prescribed in paragraph 11.4(b); or

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2. if a quorum of the Directors cannot be obtained for paragraph 11.4(a) and the Committee cannot be designated under paragraph 11.4(b), selected by majority vote of the full Board (in which Directors who are parties may participate); or
- (d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- 11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph 11.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.
- 11.6 Advancing Expenses. Expenses incurred by an officer or Director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board deems appropriate.
- 11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its Directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested Directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any Director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:
- (a) A violation of the criminal law, unless the Director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;
- (b) A transaction from which the Director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.
- 11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this Article 11 shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.
- 11.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a Director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the

court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The Director, officer, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay the Director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The Director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or
- (c) The Director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 11.1, subsection 11.2, or subsection 11.7, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith or acted in a manner he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees and related "out-of-pocket" expenses, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a Director, officer, employee or agent of the Association that imposes duties on, and which are accepted by, such persons.

11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 11 shall be applicable as to any party eligible for indemnification hereunder who has not given his or her prior written consent to such amendment.

ARTICLE 12 BY-LAWS

The first By-Laws of the Association shall be adopted by the Board and may be altered, amended or rescinded in the manner provided in the By-Laws and the Declaration.

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ARTICLE 13
AMENDMENTS

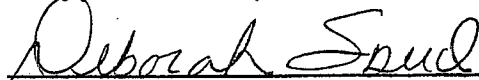
Amendments to these Articles shall be proposed and adopted in the following manner:

- 13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 13.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Subsections 5.3, 5.4 or 5.5 above, without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer and/or Institutional First Mortgagees, unless the Developer and/or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this paragraph 13.3 shall be effective.
- 13.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Escambia County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

ARTICLE 14
INITIAL REGISTERED OFFICE:
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 25 W. Government Street, Pensacola, FL 32502, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Suzanne Blankenship.

IN WITNESS WHEREOF, the Incorporator has affixed its signature this 22nd day of March, 2009.



By: Deborah Sneed

As: President, Sundown Owners Association, Inc., as
Termination Trustee of Sundown, A Condominium
Pursuant to the Plan of Termination of Sundown, A
Condominium, Perdido Key, recorded at Book 6409,
Page 118 of the Public Records of Escambia County,
Florida

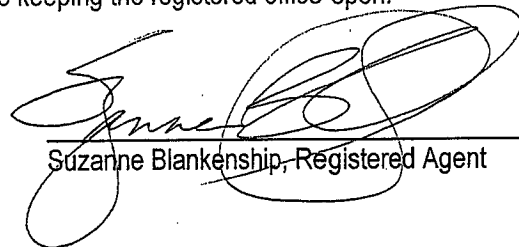
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CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing articles of incorporation, the Association named in the said articles has named Suzanne Blankenship located at 25 W. Government Street, Pensacola, FL 32502 as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.



Suzanne Blankenship, Registered Agent

DATED this 30 day of March, 2009.

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