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**DECLARATION OF CONDOMINIUM
 FOR
 CALUSA PALMS V CONDOMINIUM**

5A

On this 3rd day of August, 2005, Kimball Hill Calusa Palms Limited Partnership, a Florida limited partnership, for their successors, grantees and assigns, hereinafter the "Developer," makes the following declarations for the purpose of submitting real property owned by it to the condominium form of ownership and use.

1. **THE LAND.** The Developer is the owner of certain real property located in Lee County, Florida, more particularly described in Exhibit "A" attached hereto (the "Land").

2. **SUBMISSION STATEMENT.** The Developer hereby submits the Land described in Exhibit "A," together with all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, the "Florida Condominium Act" as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility or other service provider furnishing services to the Condominium. The covenants, conditions and restrictions contained in this Declaration shall run with the Land, and shall bind and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit or any other interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and signifies agreement to be bound by its terms.

3. **NAME & ADDRESS.** The name of the Condominium is "CALUSA PALMS V CONDOMINIUM," and its address is 14752 Calusa Palms Drive, ~~Bonita Springs~~, Florida ~~34134~~, Ft. Myers, 33919

4. **DEFINITIONS.** Certain words and phrases used in this Declaration shall have the meanings stated below, unless the context clearly shows that a different meaning was intended.

CALUSA PALMS V - DECLARATION

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4.1 "**Architectural Review Committee**" or "**ARC**" means the Architectural Review Committee as established and empowered in Article VII of the Master Declaration.

4.2 "**Assessment**" means the share of the funds required for the payment of common expenses which from time to time is assessed against each of the units.

4.3 "**Association**" means Calusa Palms V Condominium Association, Inc., a Florida corporation not for profit, which is responsible for the operation of this Condominium.

4.4 "**Association Property**" means all property, real or personal, owned by the Association for the use and benefit of the unit owners.

4.5 "**Board of Directors**" or "**Board**" means the representative body responsible for operating the Condominium, and is the body sometimes referred to in the Condominium Act as the "board of administration".

4.6 "**Condominium Documents**" means this Declaration and all recorded exhibits to it, as it and they may be amended from time to time.

4.7 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not related to some or all of the others.

4.8 "**Fixtures**" are items of tangible personal property which, by being physically attached or affixed to a unit, have become accessory to it and an integral part and parcel of it, such as: interior partition walls, built-in appliances, plumbing fixtures and cabinets in kitchens and bathrooms, light fixtures and ceiling fans, heating and air conditioning equipment, and water heaters. Floor, wall and ceiling coverings are personal property of the unit owner, and are not fixtures.

4.9 "**Guest**" means a person (other than the unit owner and his family) who is physically present in, or occupies, a unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without paying consideration. "Temporary" means no longer than sixty (60) days in any calendar year.

4.10 "**Institutional Mortgagee**" means an entity holding a mortgage encumbering a unit, including without limitation any of the following types of institutions:

(A) A federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in Florida, or a life insurance company; or

(B) A governmental, quasi-governmental or private company engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veterans Administration; or

(C) The Developer, and any investors and lenders, or the successors and assigns of such investors or lenders, who have loaned money to the Developer to acquire the land comprising the Condominium or to construct improvements on it, and who hold a first mortgage encumbering all or any portion of the Condominium.

An “**Institutional Mortgage**” is a mortgage held by an Institutional Mortgagee encumbering a unit.

4.11 “**Lease**” means a grant by a unit owner to another person of a temporary right to use the owner’s unit for valuable consideration.

4.12 “**Limited Common Elements**” are parts of the common elements that are expressly reserved herein for the use of a certain unit or units, to the exclusion of all other units.

4.13 “**Master Declaration**” or “**Calusa Palms Covenants**” means the Declaration of Covenants, Restrictions and Easements for Calusa Palms, as recorded in Book 4009, Pages 4191, *et seq.*, of the Official Records of Lee County, Florida, and all recorded exhibits thereto, as it and they may be amended from time to time.

4.14 “**Master Association**” means Calusa Palms Master Association, Inc., a Florida corporation not for profit, created as a mandatory membership association.

4.15 “**Occupy**” when used in connection with a unit, means the act of using a unit as a place of residence for two (2) or more consecutive days. An “**Occupant**” is one who occupies a unit.

4.16 “**Primary Institutional Mortgagee**” means the Institutional Mortgagee which, at the time a determination is made, holds first mortgages encumbering more units in the Condominium than any other Institutional Mortgagee, such determination to be made by reference to the number of units encumbered, regardless of the dollar amounts owed on the mortgages.

4.17 “**Rules and Regulations**” means the resolutions, rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4.18 “**Voting Interests**” refers to the arrangement established in the Condominium Documents by which each unit has one indivisible vote to be cast in association matters when a vote of the members is required or permitted.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS. Attached to this Declaration as part of Exhibit “B”, and incorporated by reference herein, are a survey of the Land, plot plans, and building floor plans which graphically describe the improvements in which the units are located. When read together with this Declaration, the exhibit is in sufficient detail to identify each unit and the common elements, and their approximate locations and dimensions.

5.1 Unit Boundaries. Each unit includes the parts of the building containing the unit that lie within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit are the following boundaries, extended to their intersections with the perimeter boundaries:

(1) **Upper Boundaries.** The horizontal plane or planes of the unfinished lower surfaces of the ceiling of the unit.

(2) **Lower Boundaries.** The horizontal plane or planes of the unfinished upper surfaces of the floor slab.

(B) **Perimeter Boundaries.** The vertical planes of the unfinished interior surfaces of the plasterboard or drywall in the perimeter walls of the unit, as shown in Exhibit "B," extended to their intersections with each other and with the upper and lower boundaries.

(C) **Interior Walls.** Non-load bearing interior partition walls within a unit are not part of any boundary of the unit.

(D) **Apertures.** Where there are openings in any boundary, including, without limitation openings for windows, doors and skylights, the boundaries of the unit extend to the interior unfinished surfaces of the window glass, doors, skylights, or other materials covering the openings, and all their frameworks and related hardware. Accordingly, windows, doors, skylights and screens, and all framing, casings and hardware therefor, are not part of the unit.

(E) A unit does not include any pipes, wiring, ducts or other installations, equipment, and facilities that are physically located within the unit boundaries, but serve two (2) or more units or the common elements, or both. Such utility installations are common elements.

In cases not specifically covered in this Section 5.1, or if there are conflicting or ambiguous provisions regarding unit boundaries, the graphic depictions of the unit boundaries in Exhibit "B" shall control in determining the boundaries of a unit, except that Section 5.1(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 Shares of Ownership. The Condominium contains twenty-four (24) units. The owner of each unit also owns an undivided one-twenty-fourth (1/24th) share of the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The owner of each unit has certain rights and a certain ownership interest in the condominium property, including the following items:

(A) Ownership of the undivided share of the common elements and the common surplus of the Association set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.

(C) Membership and voting rights in Calusa Palms Master Association, Inc., with all the rights and obligations provided in the Calusa Palms Covenants, including the non-exclusive right to use the Common Property of Calusa Palms.

(D) The exclusive right to use the limited common elements designated for the unit, and the non-exclusive right to use the common elements.

(E) 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. An easement in airspace which is no longer being used is automatically terminated.

(F) Any other appurtenances specified in this Declaration.

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended and reasonably suited, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements and limited common elements shall be governed by the Condominium Documents and by the rules and regulations of the Association.

7. COMMON ELEMENTS; EASEMENTS. The "common elements" are all portions of the condominium property and improvements thereto not included within the units, including without limitation the following:

(A) The Land.

(B) All portions of the buildings and other improvements on the Land that are not included within the units, including all limited common elements.

(C) Easements through units for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to units and the common elements.

(D) An easement for lateral and subjacent support in every portion of the Condominium which contributes to the support of a building.

(E) The equipment and installations required for furnishing utilities and other services to more than one unit or to the common elements.

7.1 Easements. Each of the following easements and easement rights is reserved over, across and through the condominium property, and is a covenant running with the Land. The easements may not be

revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section 7.1 may be encumbered by any leasehold or lien, other than those on the condominium parcels. Any lien encumbering these easements is automatically subordinate to the rights of the unit owners with respect to such easements.

(A) Utility and Other Easements. The Association has the power, as it deems necessary, and without the joinder of any unit owner, to grant easements over, under, across or through the common elements and Association property for access, or for utilities and services such as water, sewer, electricity, gas, or cable television, or other utilities or services. It may also move or relocate any existing access easements in any portion of the common elements, as the Association deems necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred. To the extent permitted by law, As long as the Developer is offering units for sale within Calusa Palms in the ordinary course of business, the Developer reserves the same power as the Association under this Paragraph (A).

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

(C) Ingress and Egress. A non-exclusive easement is hereby created in favor of each unit owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) Construction; Maintenance. The Developer (including its designees and contractors) has the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing construction and sales, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the condominium property by the unit owners.

(E) Sales Activity. As long as it is offering any unit in the Condominium for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements in order to establish modify, maintain and utilize, as it and they deem appropriate, model apartments and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show units or the common elements to prospective purchasers or tenants, erect on the Common Property or on the condominium property signs and other promotional materials to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the Condominium.

(F) The easements and rights described in Section 7.1(D) and (E) above shall terminate upon the closing of the sale of all units in this Condominium to purchasers other than a successor Developer.

7.2 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be changed, conveyed or encumbered separately from the unit, and automatically passes with the title to the unit, whether separately described in the instrument of conveyance or not. As long as the Condominium exists, no person may maintain an action for partition of the common elements. The shares of the funds and assets of the Association appurtenant to each unit cannot be assigned, pledged or transferred in any manner except as an appurtenance to the unit.

8. LIMITED COMMON ELEMENTS. Certain common elements are or may be designated as "limited common elements," and reserved for exclusive use by the owners of one or more particular units to the exclusion of all other units. The limited common elements in this Condominium, and the units to which their use is designated or assigned, are as described in this Declaration and as further identified in the attached survey and plot plan (Exhibit "B").

8.1 Designation of Certain Limited Common Elements.

(A) **Garages and Driveway Areas.** Each unit shall always have as an appurtenance the exclusive use of the one-car garage and the driveway space shown in Exhibit "B". Garages are intended for the primary use of parking and storage of motor vehicles. No garage may be converted to another primary use except with prior approval of the Board of Directors and the ARC. Owners or residents may not store personal property in their garage and then park motor vehicles in the unassigned parking areas in Calusa Palms.

(B) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, are limited common elements, the exclusive use of which is appurtenant to the unit.

(C) **Lanai.** The useable airspace comprising any lanai attached to and accessible only through a single unit shall be a limited common element.

(D) **Stairway.** Any stairway providing access exclusively to only one second floor unit is a limited common element.

(E) **Others.** Any part of the common elements that is connected to and exclusively serves a single unit, including hurricane shutters, and is specifically required in Section 11 of this Declaration, as it may be amended, to be maintained, repaired or replaced solely by, or at the expense of, the owner of the unit, shall be deemed a limited common element, whether specifically described above or not.

8.2 Exclusive Use; Transfer of Use Rights. If, after all of the units have been sold, the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific unit or units by the Developer, the Association may do so. The right of exclusive use of each limited common

element passes with the unit to which it is attached or assigned, whether separately described in the instrument of conveyance or not, and cannot be separated from the unit.

9. CONDOMINIUM ASSOCIATION. The operation of the Condominium is by Calusa Palms V Condominium Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

9.2 Bylaws. The Bylaws of the Association are the Bylaws attached as Exhibit "D", as they may be amended from time to time.

9.3 Delegation of Management. The Board of Directors may contract for the management and maintenance of the condominium property and authorize a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Members. The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the consent, approval or an affirming vote of the unit owners is specifically made necessary by a provision of the Condominium Act or the Condominium Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Florida Condominium Act and in the Condominium Documents, as well as those stated in Chapter 617, Florida Statutes, as amended, to the extent they do not conflict with an express provision of the Condominium Act or the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose reasonable fees for use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

9.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times.

The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase units and to acquire and hold, lease, mortgage and convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests of the Condominium.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of the Board of Directors, without need for authorization by the unit owners.

9.11 Roster. The Association shall at all times maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

10. ASSESSMENTS AND LIENS. The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the funds necessary for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy charges against any individual unit for any costs or fees other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association, and any other expenses or legally binding obligations properly incurred by the Association for the Condominium, including the cost of water and sewer service to the condominium property and assessments for the purpose of funding reserve accounts.

10.2 Share of Common Expenses. The owner of each unit is liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of this share of the common surplus, except as otherwise provided herein or by law.

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium

parcel is transferred for any reason, the new owner is jointly and severally liable with the old owner for all unpaid assessments that came due while the unit was owned by the previous owner, but without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 No Waiver or Excuse From Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided in Section 20.3 below as to certain first mortgagees, and in Section 10.12 below as to the Developer. Nothing herein shall be construed to prevent the Association from compromising or settling a claim for past due assessments for less than full payment, if the Board determines that such action is in the best interests of the Association.

10.6 Application of Payments; Failure to Pay; Interest; Late Payment Fees. Assessments and installments thereon paid within ten (10) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law from the due date until paid. Assessments and installments thereon are due, and the unit owner becomes liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board for payment. The Association may also impose a late payment fee, in addition to interest, as allowed by law. All payments by the owner on account shall be applied first to interest, then to any late payment fees that have been imposed, attorney's fees and costs, and finally to unpaid assessments. Payment by check is not deemed received until final payment of the check. The Association may ignore, and its rights are not affected by, a restrictive endorsement placed on a check tendered in payment of assessments.

10.7 Acceleration. If any special assessment or quarterly installment of assessments as to a unit is more than thirty (30) days past due, and a Claim of Lien has been recorded, the Association may accelerate the due date of the entire unpaid balance of the unit's annual assessment and all known special assessments for that fiscal year, as if those sums had originally been due on the date the Claim of Lien was recorded. If acceleration occurs, the Association's Claim of Lien secures payment of the entire accelerated obligation, together with interest on the entire unpaid balance, late payment fees, attorney's fees and costs as provided by law. The Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to

a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction.

10.9 Priority of Lien. To the extent required by law, the Association's lien for unpaid assessments is subordinate and inferior to the lien of a recorded first mortgage (unless the Claim of Lien was recorded before the mortgage), but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise provided by law. A lease of a unit is subordinate and inferior to the Association's Claim of Lien regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 Certificate as to Assessments. Within fifteen (15) days after receiving a written request from a unit owner, unit purchaser or mortgagee, the Association shall provide written certification (commonly referred to as an "estoppel letter") to the person making the request stating whether all assessments and other monies owed to the Association by the unit owner with respect to the unit have been paid. Any person other than the unit owner who reasonably relies upon such certification shall be protected thereby.

10.12 Statutory Assessment Guarantee; Liability of Developer for Common Expenses. The Developer guarantees that from the date of recording of the Declaration of Condominium until December 31, 2004, or the date control of the Condominium Association is turned over to unit owners other than the Developer (the "turnover date"), whichever occurs first, quarterly assessments against each unit for common expenses of the Association will not exceed \$600 per quarter. If the turnover date has not occurred by December 31, 2004, The Developer further guarantees that from January 1, 2005, until December 31, 2005, or the date control of the Condominium Association is turned over to unit owners other than the Developer (the "turnover date"), whichever occurs first, quarterly assessments against each unit for common expenses of the Association will not exceed \$690 per quarter. If the turnover date has not occurred by December 31, 2005, the Developer guarantees that from January 1, 2006, until the turnover date, quarterly assessments against each unit for common expenses will not exceed \$793.50.

During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

11 MAINTENANCE, REPAIRS AND REPLACEMENTS; ALTERATIONS AND ADDITIONS. Responsibility for the protection, maintenance, repair and replacement of the condominium property, and the restrictions on its alteration and further improvement, shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, insurance, maintenance, repair and replacement of the common elements and association property (other than any limited common elements or additions to the common elements that are required elsewhere herein to be

maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring, up to the circuit breaker panel in each unit.
- (B) Water pipes, up to the individual unit cut-off valve(s) inside the unit.
- (C) Cable television lines, up to the wall outlet(s) in the units.
- (D) Air conditioning condensation drain lines, up to the point where an individual unit drain line cuts off.
- (E) Sewer lines, up to the point where a sewer line enters the individual unit.
- (F) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (G) The outside surface of the main entrance door to each unit.
- (H) All exterior building walls, including all exterior painting, waterproofing and caulking.
- (I) The maintenance of the driveways, sidewalks, and the roof, exterior surfaces and all structural components of the garages, as well as the exterior surfaces of the garage doors.
- (J) The maintenance and replacement of all improvements within any courtyard leading to a unit as shown in Exhibit "B," including all landscaping.
- (K) The maintenance, repair and replacement of the hurricane shutters provided for each unit by the Developer.
- (L) The maintenance, repair and replacement of all lawns, landscaping and driveways up to Calusa Palms Drive, pursuant to Section 8.10 of the Master Declaration.

The Association's responsibilities do not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before damage, and the cost is a common expense, except the Association shall not be responsible for the damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of screens, windows and window glass.

- (B) The main front entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit, except those which are expressly made the Association's responsibility elsewhere in this Section 11.
- (E) Any circuit breaker panel located inside a unit, and all electrical wiring into the unit from the panel.
- (F) Appliances, built-cabinets, water heaters, smoke alarms and vent fans.
- (G) Except as provided in Section 11.4 below, all air conditioning and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) All interior partition walls which do not form part of the boundary of the unit.
- (M) The interior of the garage assigned to the unit, the garage door and windows and the garage door opener.
- (N) The day-to-day cleaning of the driveways up to Calusa Palms Drive, pursuant to Section 8.10 of the Master Declaration.

11.3 Other Unit Owner Responsibilities:

(A) **Lanais and Stairways.** Where a limited common element consists of a lanai or stairway, the unit owner who has the right of exclusive use of the area shall be responsible for the day-to-day cleaning and care of the walls, steps, floor and ceiling bounding the area, if any; all fixed glass and sliding glass doors and screens in the entrance to said area, if any; and all electrical outlet(s) and light fixture(s), if any, and the replacement of light bulbs. No lanai or stairway may be carpeted, covered or enclosed in any way without the prior written approval of the Board of Directors and the ARC. The maintenance, repair and replacement and insurance of such approved carpeting, covering or enclosure shall be the responsibility of the unit owner. Maintenance, repair and replacement of screening and sliding glass doors is the responsibility of the owner. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building, the concrete slabs and maintenance of landscaping in the courtyards which was originally provided by the Developer.

(B) Interior Decorating. Each unit owner is responsible at his own expense for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(C) Flooring. All units shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms, foyers or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g., marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any work being done. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.

(D) Window Coverings. The coverings of windows and doors, whether by curtains, draperies, shades, reflective film or other items, whether installed within or outside of the unit, if they are visible from outside the unit, shall be neutral in color and further subject to the rules and regulations of the Association.

(E) Modifications and Alterations. If a unit owner makes or allows any physical modifications, installations or additions to his unit or the common elements, that owner, and his successors in title, shall be financially responsible for:

- (1) Insuring, maintaining, repairing and replacing the modifications, installations or additions as long as they exist;
- (2) The costs incurred by the Association or others for repairing any damage to the common elements, other units, or other property resulting from the existence of such modifications, installations or additions; and
- (3) The costs of removing and replacing or reinstalling the modifications if removal becomes reasonably necessary in order for the Association to properly and fully perform its duties to inspect, maintain, repair, replace, or protect other parts of the Condominium.

In the event of irreconcilable conflict, this paragraph (E) shall prevail over the provisions of Section 11.1 above.

(F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the condominium property, whether with or without Association approval, the owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, that all required building or other permits will be obtained, and that the owner will be financial responsible for any resulting liability of the Association, or damage to persons or property not paid by the contractor's insurance.

11.4 Appliance Maintenance Contracts. If there becomes available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the maintenance contracts shall be the responsibility of the unit owner.

11.5 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors and the ARC, which approval may be denied if the Board of Directors or ARC determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning or other modifications, additions or installations which may be installed where visible from outside the unit are subject to regulation by the Board of Directors. No person may alter the landscaping of the common elements in any way without prior Board and ARC approval. The Board of Directors or the ARC may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium. Any such alteration or addition to the unit or the common elements, that in any manner changes the exterior appearance of any portion of the Condominium, must also be approved by the ARC.

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall not expend more than \$20,000 in the aggregate in any calendar year making any material alteration of, or substantial additions to, the common elements or to real property owned by the Association without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. Any addition or alteration that changes the exterior appearance of any portion of the Condominium, must also be approved by the ARC, and the approval shall not be unreasonably withheld. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial additional to the common elements, no prior unit owner approval is required.

11.7 Enforcement of Maintenance Responsibilities. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required in this Section 11, the Association may institute legal proceedings to enforce compliance, or may take any other lawful actions to remedy the violation, including but not limited to, repairing, replacing, or maintaining any item which in the business judgment of the Board of Directors constitutes an unreasonable danger to the common elements or residents. Any expenses incurred by the Association in performing work within a unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

11.8 Negligence; Damage Caused by Condition in Unit. Each unit owner is liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made

necessary by his intentional act or negligence, or by that of any member of his family or his guests, employees, agents or tenants. Each unit owner has a duty to maintain his unit, any limited common element the use of which is appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 11.1 above), and all personal property therein, in such a manner as to prevent foreseeable and reasonably preventable injuries to persons and damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from an owner's failure to perform this duty causes such injury or damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If any involved unit is not occupied when the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair damage within the unit with the prior consent of the owner.

11.9 Association's Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units or the common elements. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of unit access shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall be liable for all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by the actions taken in gaining entrance thereto, and all damages resulting from delay in gaining entrance to his unit because a key was not available.

11.10 Pest Control. The Association may opt to supply pest control services inside of each unit, with the cost being part of the common expenses. A unit owner has the option to decline service unless the Association determines that service is necessary for the protection of the Condominium or the building in which it is located as a whole, in which case the owner must either permit the Association's pest control company to enter the unit, or employ a licensed pest control company of the owner's choosing to perform the required pest control services and furnish written evidence to the Association that such treatment has occurred. Because the cost of pest control service provided by the Association is a common expense, the election of any owner not to use the service shall not reduce the owner's assessments.

11.11 Modification: Lanai Enclosures. With the approval of the ARC, the Board of Directors may adopt a basic approved plan for screening and/or glassing-in of lanais. A unit owner may screen or enclose the lanai serving his unit in accordance with the approved basic plans without specific consent from the Board of Directors, provided that such screening or enclosure conforms in all respects to the approved basic plans and specifications therefor.

11.12 Hurricane Shutters. Notwithstanding Section 11.11 above, in addition to the model, style and color of the hurricane shutters, provided by the Developer which is the standard hurricane shutter

approved for use on the Condominium, the Board of Directors may adopt and approve one or more other models, styles and colors of hurricane shutters as optional hurricane shutters for use on the Condominium. No hurricane shutter except the models, colors and styles adopted by the Board of Directors may be installed, and the optional model, style and color of the hurricane shutters, must also be approved by the ARC. The unit owner is responsible for installing and operating all approved hurricane shutters.

12. USE RESTRICTIONS. The occupancy of units and the use of the condominium property shall be in accordance with the following:

12.1 Units. Each unit shall at all times be occupied by only one family and its guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the Condominium or the address of any unit be advertised to the public as the location of any business. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any resident from maintaining a personal or professional library, keeping his personal, business or professional records in his unit, or handling his personal, business or professional telephone calls, written correspondence, or other telecommunications in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by an owner which might unreasonably disrupt the residential ambiance of the Condominium or make it obvious that a business is being conducted there, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients.

12.2 Occupancy of Units in Absence of Owner. If the owner and his family who permanently reside with him are absent from the unit and are not occupying it, and the unit has not been leased, the owner may permit his unit to be occupied by his guests.

12.3 Occupancy of Unit When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner who may occupy the unit together with the unit owner.

12.4 Minors. All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.5 Pets. The owner of each unit may keep no more than two pets, of a normal domesticated household type in the unit. The pet(s) must be carried under the owner's arm or be leashed at all times while outside of the unit, and the pet owner shall immediately remove any solid waste left by his pet upon the common elements. In addition, a reasonable number of caged birds and fish in aquariums are permitted, provided that the restrictions in Section 8.17 of the Master Declaration are not violated. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased units. No reptiles, monkeys, amphibians, poultry, swine or livestock may be kept in the Condominium.

12.6 Nuisances. No owner shall use his unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the occupants of another unit, nor permit the premises to be used in

a disorderly or unlawful way. The uses of each unit shall be consistent with existing laws, the Condominium Documents, the Association's rules and regulations, and the Calusa Palms Master documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.7 Signs. No person other than the Developer may post or display "For Sale," "For Rent," "Open House" and other similar signs anywhere within the Condominium or on the condominium property, including those posted in windows of buildings or motor vehicles.

12.8 Uses of Common Elements. Common walkways, stairways, elevators and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

12.9 Motor Vehicles; Parking. No boat, boat trailer or other trailer of any kind, camper, mobile home, motor home, commercial truck or disabled vehicle is permitted to be parked, kept or stored in the Condominium. No motor vehicle may be parked anywhere other than on designated areas intended for that purpose or in garages. Parking on lawns or landscaped areas is prohibited. No motorcycles, motor scooters, motorized bicycles commonly known as "mopeds," golf carts or other similar vehicles are allowed on the common elements, unless fully enclosed in a garage. No commercial vehicles of any kind (other than those temporarily present on service business) may be parked in the condominium for more than four (4) hours per day, unless such vehicle is necessary in the actual construction or repair of a structure or for grounds maintenance or maintenance of public utilities. The parking of 2-axle, non-commercial pickup trucks is permitted. The parking of vans will be permitted if the following requirements are met:

- (A) The vehicle must be used primarily for personal, non-business purposes.
- (B) All vans must have windows on all side panels and seating capacity throughout.
- (C) No large, unsightly or commercial tools, equipment, merchandise, materials or supplies may be kept or stored in the van.
- (D) The van may not be used as a domicile or residence, either permanent or temporary.

Because the number of parking spaces is limited, the right of the owners and occupants of any unit to park, keep or store more than two (2) motor vehicles in the Condominium may be limited or regulated by the Association.

13. LEASING OF UNITS. In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of units by owners shall be restricted as provided in this section. The ability of a unit owner to lease his unit to others is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by the owner. All leases of units must be in writing. An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least ten (10) days prior to the first day of occupancy under the lease together with the name

and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. A unit owner may lease only his entire unit, and then only in accordance with this Section 13. The lessee must be a natural person.

13.1 Term of Lease and Frequency of Leasing. The minimum lease term shall be six (6) months. No lease may be for a term of longer than one (1) year.

13.2 Occupancy During Lease Term. No one but the lessee, the members of his family within the first degree of relationship by blood, adoption or marriage, and their spouse and temporary house guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

13.3 Use of Common Elements and Association Property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

13.4 Regulation by Association. All of the provisions of the Condominium Documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium Documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

13.8 Exception. Section 13.1 is not applicable to a lease by an institutional mortgagee that acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

14. TRANSFERS OF OWNERSHIP OF UNITS. A copy of the recorded deed transferring an interest in a unit shall be delivered to the Board of Directors. In order to maintain a community of congenial, financially responsible residents, with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable quiet community and peace of mind for all residents, the transfer of ownership of a unit shall be subject to the following provisions:

14.1 Forms of Ownership:

(A) **By one Person.** A unit may be owned by one natural person.

(B) **By Two or More Persons.** Ownership of units by two or more natural persons is permitted. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, the owners shall designate in writing one approved natural person as "primary occupant," and such designation shall be delivered to the Association. The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be made in writing to the Board of Directors.

(C) By Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The owner(s) shall designate in writing one natural person to be the "primary occupant," and such designation shall be delivered to the Association. The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be made in writing to the Board of Directors.

(D) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant(s) shall be the only Association member(s) from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for the purposes of determining voting and occupancy rights.

15. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 By the Unit Owner. Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to property or liability to others that would otherwise be covered by such insurance. The listing of specific types of coverage in this Section is intended as an example, not as a comprehensive list of all coverages needed or available.

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage it is required by law and the Condominium Documents to carry, and may obtain and keep in force any additional insurance coverage it deems necessary or advisable. The named insured shall be the Association, and the unit owners and their mortgagees without naming them, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

15.3 Required Coverage. The Association shall maintain adequate insurance covering the buildings and the common elements, as well as all association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(C) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Statutory Fidelity Bond.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

(E) Leakage, seepage and wind-driven rain.

(F) Worker's Compensation.

15.5 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. Insurance policies purchased by the Association are for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

(A) **Common Elements**. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

(B) **Units**. Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.

(C) **Mortgagee**. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) **Deductible**. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss, or required to pay for the repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them proportionately based upon the amount of loss and each party's degree of responsibility.

15.8 Distribution of Proceeds. Proceeds from Association policies shall be distributed to or for the benefit of the unit owners in the following manner:

(A) **Costs of Protecting and Preserving the Property**. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) **Cost of Repair or Reconstruction**. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the costs as provided in Sections 15.7(A) and (B). Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct**. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

15.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY. If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

16.2 Damage to Common Elements - Less than "Very Substantial." Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as herein defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 "Very Substantial Damage." As used in this Declaration, the term "very substantial damage" shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the units cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial damage" occur then:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repairs and shall proceed to settle all insurance claims that will provide funds for reconstruction.

(C) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the information, to determine the opinion of the membership on rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for reconstruction and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the work can be accomplished with the funds already available for that purpose, plus (if needed) a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be rebuilt unless two thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel, engineers and other experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for and repairs and reconstruction will not be sufficient to cover the estimated cost so that it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred; then unless two thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy the necessary assessments and shall proceed to negotiate and contract for repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

16.5 Equitable Relief. If damage to the common elements renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the unit owner may petition a court for equitable relief, which may include a termination of the Condominium, followed by partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months after the occurrence of the damage or destruction, and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original building, or according to different plans and specifications approved by the Board of Directors, by the owners of at least two-thirds (2/3rds) of the units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION.

17.1 Deposit of Awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against the defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be terminated after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after suffering property damage.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed Association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

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

17.5 Units Reduced in Size but Tenable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Restoration of Unit. The unit shall be made tenable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

(B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

(C) Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking. Such amendment must be approved by a majority of all unit owners if it is not ordered by a governmental entity, and the consent of mortgagees is not required for such amendment.

17.6 Unit Made Untenantable. If the taking is of an entire unit, or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

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

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

(C) **Adjustment of Shares in Common Elements.** The shares on the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of units. This shall be done by restating the ownership shares of the continuing units in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment. Such amendment must be approved by a majority of all unit owners if it is not ordered by a governmental entity, and the consent of mortgagees is not required for such amendment.

(D) **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

(E) **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisal shall be paid by the party selecting the appraiser.

17.7 Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to or for the benefit of the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

17.8 Amendment of Declaration. The changes in units, in the common elements and in the ownership of the common elements and sharing common expenses that are necessitated by condemnation, shall be accomplished by amending this Declaration. Such amendment must be approved by a majority of all unit

owners if it is not ordered by a governmental entity, and the consent of mortgagees is not required for such amendment.

18. TERMINATION.

18.1 Agreement. The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourths (3/4ths) of the units, and the Primary Institutional Mortgagee.

18.2 Very Substantial Damage. If the Condominium suffers "very substantial damage" to the extent defined in Section 16.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated as soon as reasonably possible.

18.3 Certificate of Termination. The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice President with the formalities of a deed, and certifying as to the facts affecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as termination trustee, and shall be signed by the Trustee indicating willingness to serve in that capacity. A Trustee is not required to be used in connection with a termination caused by a merger of condominiums under Section 22.7 below. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Official Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel is automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

18.4 Wind-up of Association Affairs. The termination of the Condominium does not, by itself terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section.

18.5 Trustee's Powers and Duties. The Termination Trustee shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section 18. The Termination Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and such fee and all costs and expenses incurred by the Termination Trustee in the performance of its duties shall be paid by the Association or taken from the proceeds of the sale of the former condominium and association

property, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination trustee unless such liabilities are the result of negligence or malfeasance. The Termination Trustee may rely upon the written instructions and information provided by officers, Directors or agents of the Association, and shall not be required to inquire beyond such information and instructions.

18.6 Partition; Sale. Following a termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests of the Condominium agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within one (1) year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

18.7 New Condominium. The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.

18.8 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land; and they shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former condominium property prior to its sale or other disposition, are common expenses, the payment of which shall be secured by a lien on the beneficial interests owned by each of the former unit owners or their successors and assigns, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

19. OBLIGATIONS OF OWNERS.

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Condominium Documents and the rules and regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit;

(D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions; or

(E) Any Director appointed by the Developer.

19.2 Waiver of Rights. The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by law or by the Condominium Documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

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

20. RIGHTS OF MORTGAGEES.

20.1 Approvals. Written consent of the Institutional Mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the ownership interests of the unit in the common elements and common surplus, except as provided in Sections 17.5(C), 17.6 (C) and 17.8 above.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 Mortgage Foreclosure. If the mortgagee of a first mortgage of record, or any other person, acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the new owner shall be liable for the payment of the share of the common expenses or assessments attributable to the condominium parcel, which came due prior to acquisition of title, to the extent provided by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which the new owner is exempt from paying becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. The owner or acquirer of title to a condominium parcel by foreclosure (or by a deed in lieu of foreclosure) regardless of whether the unit is occupied, is not excused from paying any assessments coming due during the period of his ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. A mortgagee has an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees, upon written request current copies of the recorded Condominium Documents, and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

20.6 Financial Statements. Any Institutional Mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association, as required by Section 718.111, Florida Statutes.

20.7 Lender's Notices. Upon written request to the Association, an institutional mortgagee is entitled to timely written notice of:

- (A) Any delinquency of sixty (60) days or longer in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (C) Any proposed action that requires the consent of some or all holders of Institutional Mortgages.

20.8 Exculpation of Association. The failure of the Association to provide to a mortgagee any notice required by this Section 20 shall not be the basis for liability on the part of the Association, unless the written request for the notice was given by the mortgage holder within one year before the notice should have been given.

21. PROVISIONS RELATED TO DEVELOPER. Notwithstanding any other provision of this Declaration, for as long as the Developer, or any successor in interest to the development rights of the Developer is offering any units in the Condominium for sale in the ordinary course of business, the following shall apply:

21.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the units in the Condominium, neither the unit owners nor the Association may use the condominium property in any way that unreasonably interferes with the completion of construction and the sale of units. The Developer may make any use of the unsold units and the common elements that may reasonably be expected to facilitate completion and sales without unreasonably interfering with the rights of the unit owners, including, but not limited to, maintenance of a sales office, display of signs,

leasing units and showing the units for sale to prospective purchasers. Until it no longer owns any units for sale in the ordinary course of business, the Developer also reserves the right to sell and lease back one or more units for use as a "hospitality suite," providing short-term guest accommodations for prospective purchasers or other business guests of the Developer.

21.2 Assignment. All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the Condominium Documents may be assigned by the Developer to a successor developer without the consent of any other unit owner or any holder of a mortgage secured by any unit. In the event of the foreclosure of any construction mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer.

21.3 Amendments by Developer. The Developer has the right under the Condominium Act to amend this Declaration and its exhibits for certain specific purposes. Said amendments may be made and executed solely by the Developer and recorded in the Official Records of Lee County, Florida, without any requirement of securing the consent of any unit owner, the Association, or the holder of any lien encumbering a condominium parcel.

21.4 Sale of Units. The Developer has the right to sell or transfer any unit owned by it to any person, on such terms and conditions as it deems in its own best interest.

21.5 Turnover of Association Control. When unit owners other than the Developer elect a majority of the Directors, the Developer relinquishes control of the Association, and the unit owners simultaneously assume control. At that time the Developer shall deliver to the Association all property and records of the Association, held or controlled by the Developer. The Developer may turn over control of the Association to unit owners other than the Developer earlier than the statutory deadline, by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of unit owners other than the Developer to elect Directors and assume control. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with the resignations if unit owners other than the Developer refuse or fail to assume control.

21.6 Developer's Rights. As long as the Developer is offering any units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

- (A) Any amendment of the Condominium Documents which would adversely affect the Developer's rights.
- (B) Any assessment of the Developer as a unit owner for capital improvements.
- (C) Any action by the Association that would reasonably be viewed as detrimental to the sale of units by the Developer. An increase in assessments for common expenses shall not be deemed detrimental to the sales of units.

22. AMENDMENT OF DECLARATION. Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted in the following manner:

22.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by petition signed by the owners of at least one-fourth (1/4th) of the units.

22.2 Procedure. If any amendment to this Declaration is proposed as provided above, the proposed amendment shall be submitted to a vote of the unit owners not later than the next annual meeting for which proper notice can be given. In the case of proposed amendments by petition of the unit owners, the Association may have Association counsel revise the wording of the amendment or its manner of presentation, but only for the purpose of meeting minimum requirements for form or presentation of amendments, and to clarify or correct the wording of the amendment without materially changing the intent and effect of the amendment if it is adopted. The Association is under no obligation to present to the members for a vote any proposed amendment that in the opinion of Association counsel would require or permit any person to perform an unlawful act or omission to act.

22.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests who are present in person, or by proxy, and voting at any annual or special meeting called for the purpose. Amendments may also be approved without a meeting as provided in Section 3.12 of the Bylaws. Prior to the assumption of control of the Association by unit owners other than the Developer, this Declaration and all exhibits may be amended by the approval of a majority of the Directors, without need for a vote of the unit owners.

22.4 Certificate; Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted. The certificate shall be in the form required by law and shall be executed by an authorized officer of the Association. The amendment is effective when the certificate and copy of the amendment are duly recorded in the Official Records of Lee County, Florida.

22.5 Proviso. An amendment to this Declaration may change the configuration or size of a unit in a material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, but only if the record owner of the unit, his institutional mortgagee, if any, and the owners of at least a majority of the remaining units, consent to the amendment. This proviso does not apply to changes in ownership shares necessitated by partial condemnation or a taking by eminent domain under Section 17 above, nor to mergers of condominiums under Section 22.7(B) below.

22.6 Amendment of Provisions Relating to Developer. As long as the Developer holds any units in the Condominium for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

22.7 Mergers and Consolidations. Calusa Palms is planned to contain more than two (2) condominiums and other forms of residential development. This multi-development, multi-association structure is administratively convenient and desirable from the Developer's perspective.

(A) Corporate Mergers or Consolidations. It is possible, however, that the unit owners in two or more of the condominiums in Calusa Palms, after they have assumed control of their associations, will determine that it is financially beneficial and in their best interests collectively to consolidate or merge any or all of the condominium associations in Calusa Palms into one association, in the manner provided in Chapter 617, Florida Statutes, as it may be amended from time to time, for the merger or consolidation of non-profit corporations, without necessarily merging the condominiums or property comprising other neighborhoods operated by the associations involved. In that event, this Declaration and all recorded exhibits to it can be amended in any way necessary to facilitate or permit such a merger or consolidation of associations, by the approval of at least a majority of the voting interests of this Condominium who are present in person or by proxy and voting at a meeting of the members called for the purpose of approving the proposed merger or consolidation.

(B) Mergers of Condominiums. It is also possible that the unit owners in two or more condominiums and/or other residential developments in the Calusa Palms after they have assumed control of their associations, will determine that it is financially beneficial and in their best interests collectively to consolidate or merge the property comprising two or more condominiums in the Calusa Palms Complex into a single condominium, operated by one association, as provided for in Section 718.110(7), Florida Statutes, as amended. For that reason, regardless of any other provision in this Declaration to the contrary, this Declaration and all of the recorded exhibits to it may be amended in any way reasonably necessary to accomplish such a property merger by the written consent of a least seventy-five percent (75%) of the voting interests of each condominium involved, and the approval of all record owners of liens on the units. No other approval, consent or joinder of any other person shall be necessary. Proviso: the amendments or new documents accomplishing a property merger must provide that:

- (1) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and lienholders, shall not be impaired by the merger;
- (2) The then-existing restrictions on the use, occupancy and transfer of units shall not be materially changed as part of the merger; and
- (3) The share of common expenses and ownership of the common elements for each unit in the new condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of dwelling units in all condominiums or other developments being merged.

23. MISCELLANEOUS.

23.1 Severability. The invalidity or unenforceability in whole or in part of any section, subsection, paragraph, sentence, clause, phrase or word of this Declaration, or of any exhibit to this Declaration, shall not affect the remaining portions.

23.2 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Official Records of Lee County, Florida.

23.3 Conflicts. If there is an irreconcilable conflict between any provision of this Declaration and the Commons Documents or the Condominium Act, the Commons Documents or the Condominium Act shall control. If there is a conflict between this Declaration and the Condominium Association's Articles of Incorporation or Bylaws, the Declaration shall control.

23.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits, and the Board's interpretation shall be binding upon all parties unless it is wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

23.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in any of the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

23.6 Headings. The headings used in the Condominium Documents, the use of bold print, italics, and various sizes of type, as well as the capitalization of certain words, are for ease of reading and reference purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed on the day and year shown below.

KIMBALL HILL CALUSA PALMS LIMITED PARTNERSHIP, a Florida limited partnership
By: **KIMBALL HILL HOMES FLORIDA, INC.**, a Florida corporation, its general partner

IN THE PRESENCE OF:

Candice Bain
Witness No. 1
CANDICE BAIN
Printed Name

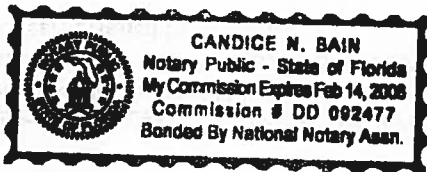
Lindsay Bensko
Witness No. 2
Lindsay Bensko
Printed Name

By: Peter B. Comeau
Printed name: Peter B. Comeau
Its: Senior Vice President
2907 Bay to Bay Blvd. Suite 301
Tampa, FL 33629

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 3rd day of August, 2005, by Peter B. Comeau as Senior V.P. of Kimball Hill Homes Florida, Inc., a Florida corporation, as general partner of Kimball Hill Calusa Palms Limited Partnership, a Florida limited partnership, on behalf of the corporation and partnership. He is [] personally known to me or has [] produced _____ as identification.

Candice N. Bain
Notary Public



This document prepared by:
Steven P. Kushner, Esq.
Becker & Poliakoff, P.A.
14241 Metropolis Avenue
Fort Myers, FL 33912

JOINDER AND CONSENT

The undersigned officer of BANK OF AMERICA, N.A., a national banking association, hereby consents to and joins in the making of the foregoing Declaration of Condominium for Calusa Palms V Condominium (the "Declaration"), made by KIMBALL HILL CALUSA PALMS LIMITED PARTNERSHIP, a Florida limited partnership, and hereby consents that its interest in the land legally described in Exhibit "A" to said Declaration, as described in that certain Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing, recorded on December 10, 2004, in O.R. Book 4522, Pages 0590 through 0610, in the Public Records of Lee County, Florida, be subjected to the covenants, conditions and restrictions contained in the Declaration.

Date: June 28, 2005

Witnesses:

[Signature]
Print name: Kevin Koch

Vince Daley
Print name: VINCE DALEY

BANK OF AMERICA, N.A., a national banking association

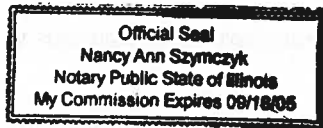
By: [Signature]
Patricia A. Provenzano

Title: Senior Vice President
Address: 18 W 140 W Butterfield
Oak Brook Terrace, IL 60181

(CORPORATE SEAL)

STATE OF Illinois
COUNTY OF DuPage

The foregoing instrument was executed before me this 28th day of June, 2005, by Patricia A. Provenzano, as Senior Vice President of BANK OF AMERICA, N.A., a national banking association, on behalf of the association. He/She is personally known to me or did produce Drivers License as identification.



[Signature]
Signature of Notary Public (SEAL)
Nancy Ann Szymczyk
Print name

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CALUSA PALMS V. CONDOMINIUM
LYING IN SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA.

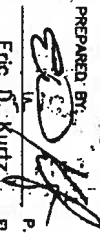
EXHIBIT "A"

LEGAL DESCRIPTION
CALUSA PALMS V CONDOMINIUM

A PORTION OF TRACT 'F-2', CALUSA PALMS, LYING IN SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST, SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

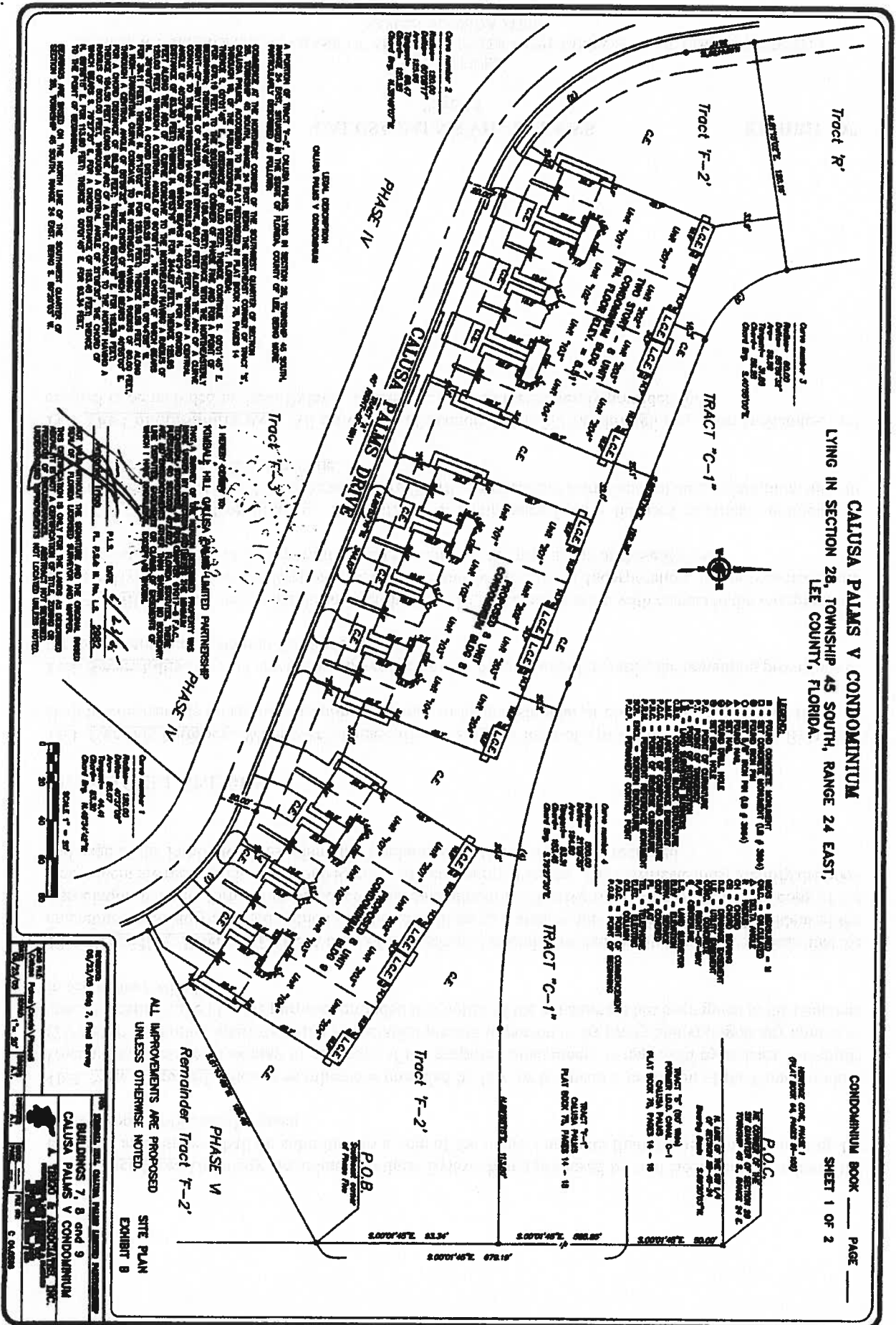
COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST, BEING THE NORTHEAST CORNER OF TRACT 'S', CALUSA PALMS, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 75, PAGES 14 THROUGH 18, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA:
THENCE S. 00°01'45" E., A DISTANCE OF 50.00 FEET; THENCE CONTINUE S. 00°01'45" E. FOR 679.19 FEET, TO THE SOUTHEAST CORNER OF PHASE FIVE AND FOR A POINT OF BEGINNING; THENCE S. 61°43'49" W. FOR 186.48 FEET; THENCE WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CALUSA PALMS DRIVE, 85.07 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 120.00 FEET, THROUGH A CENTRAL ANGLE OF 40°37'08", THE CHORD OF WHICH BEARS N. 48°34'42" W. FOR A CHORD DISTANCE OF 83.30 FEET; THENCE N. 68°53'16" W. FOR 344.87 FEET; THENCE 125.95 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 120.00 FEET, THROUGH A CENTRAL ANGLE OF 60°08'17", THE CHORD OF WHICH BEARS N. 38°49'07" W. FOR A CHORD DISTANCE OF 120.25 FEET; THENCE N. 08°44'58" W. FOR 36.11 FEET; THENCE N. 81°15'02" E. FOR 120.16 FEET; THENCE 58.58 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 55°56'32", THE CHORD OF WHICH BEARS S. 40°55'00" E. FOR A CHORD DISTANCE OF 56.28 FEET; THENCE S. 68°53'16" E. FOR 192.39 FEET; THENCE 184.50 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 500.00 FEET, THROUGH A CENTRAL ANGLE OF 21°08'30", THE CHORD OF WHICH BEARS S. 79°27'30" E. FOR A CHORD DISTANCE OF 183.45 FEET; THENCE N. 89°58'15" E. FOR 113.80 FEET; THENCE S. 00°01'45" E. FOR 93.34 FEET, TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST, BEING S. 89°20'03" W.

PREPARED BY: 
Eric D. Kurtz P.L.S. DATE 8/19/04
FL P.S. & M. No. L.S. 4163
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

A. TRIGO & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS & PLANNERS
2223 TRADE CENTER WAY
NAPLES, FLORIDA 34109
LAND SURVEYING BUSINESS # 3864

Exhibit "B"



CONDOMINIUM BOOK _____ PAGE _____
 SHEET 1 OF 2

THE GENERAL PLAN CALUSA PALMS V CONDOMINIUM BUILDINGS 7, 8 AND 9 CALUSA PALMS V CONDOMINIUM A TRISTAR ASSOCIATES, INC.

DATE: 02/23/05
 DRAWN BY: [Signature]

SCALE: 1" = 30'

ALL IMPROVEMENTS ARE PROPOSED UNLESS OTHERWISE NOTED.

SITE PLAN EXHIBIT B

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 HENRY...
 HENRY...

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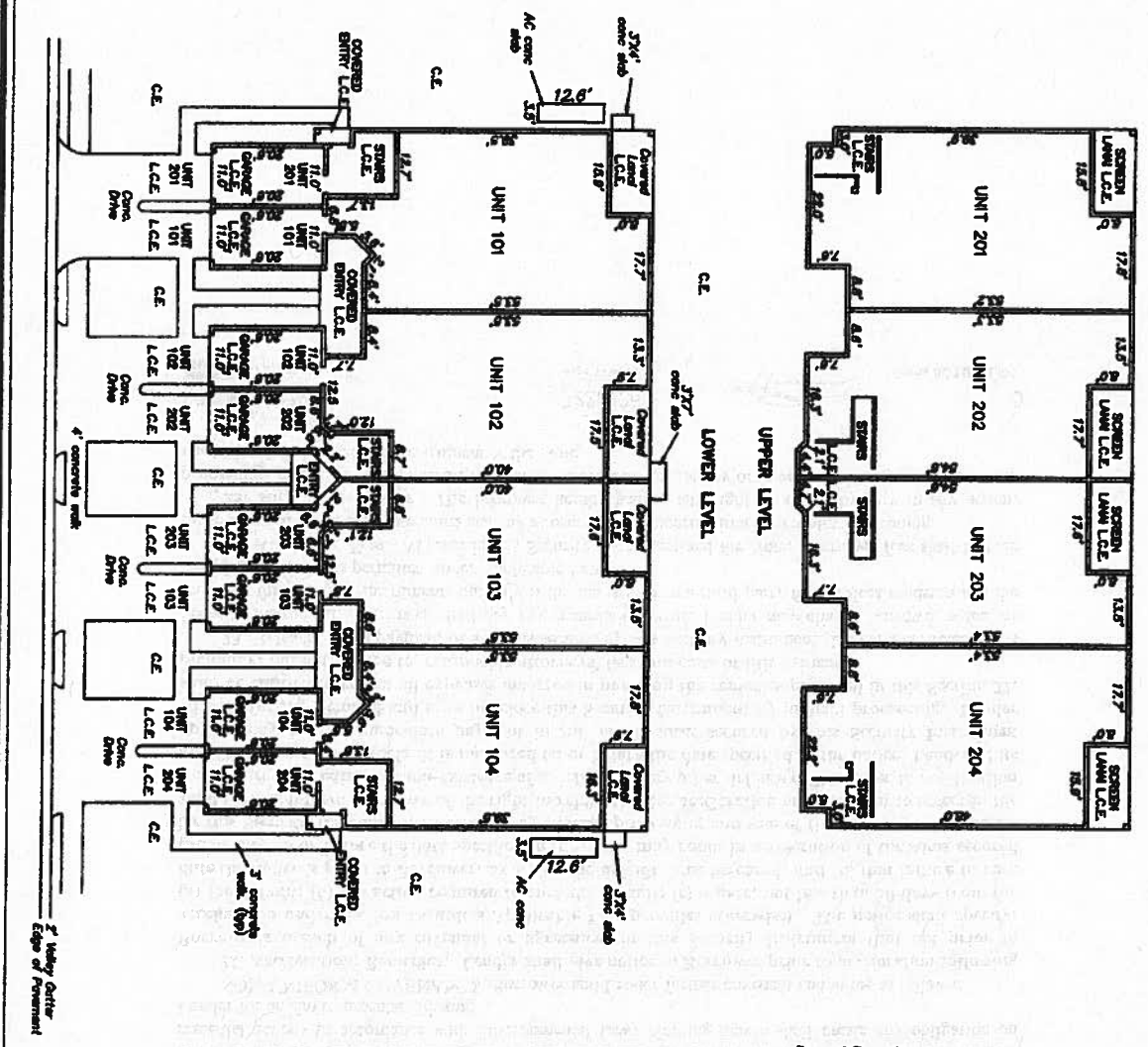
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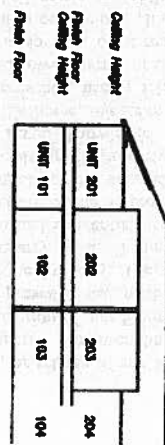
Exhibit "B"



CALUSA PALMS V CONDOMINIUM BUILDINGS 7

CONDOMINIUM BOOK _____ PAGE _____

SHEET 2 OF 2



UNIT 201	202	203	204
UNIT 101	102	103	104

TYPICAL SECTION

UNIT	FRESH FLOOR ELEV.	CEILING ELEV.	FRESH FLOOR ELEV.	CEILING ELEV.	FRESH FLOOR ELEV.	CEILING ELEV.	FRESH FLOOR ELEV.	CEILING ELEV.
UNIT 101	8.91'	17.81'	UNIT 201	18.85'	28.15'	UNIT 102	8.91'	17.81'
UNIT 102	8.91'	17.81'	UNIT 202	18.85'	28.15'	UNIT 103	8.91'	17.81'
UNIT 103	8.91'	17.81'	UNIT 203	18.85'	28.15'	UNIT 104	8.91'	17.81'
UNIT 104	8.91'	17.81'	UNIT 204	18.85'	28.15'			

NOTES

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. REFER TO THE REGULATION OF CONDOMINIUM FOR DEFINITION AND DESCRIPTION OF THE UNIT ELEMENTS, LIMITED COMMON ELEMENTS AND COMMON ELEMENTS.
3. ALL IMPROVEMENTS ARE PROPOSED UNLESS OTHERWISE NOTED.

LEGEND

C.E. = COMMON ELEMENT
 L.C.E. = LIMITED COMMON ELEMENT
 U.E. = UNIT ELEMENT



EXHIBIT B

CALUSA PALMS V CONDOMINIUM BUILDINGS 7
 A. BERDO & ASSOCIATES, INC.
 ARCHITECTS
 1111 N. GULF BLVD., SUITE 1000, MIAMI, FL 33132
 TEL: (305) 371-1111 FAX: (305) 371-1112
 WWW.ABERDO.COM
 PROJECT NO. 04-000000
 SHEET NO. 04-000000

Exhibit "B"

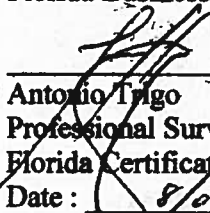
SURVEYORS CERTIFICATE

As to Calusa Palms V Condominium, being part of Section 28, Township 45 South, Range 24 East, Lee County, Florida.

I, Antonio Trigo, of Naples, County of Collier and State of Florida, hereby certify as follows:

- 1. That I am a Professional Surveyor and Mapper authorized to practice in the State of Florida.
- 2. That this certificate is made as to Building 7, Calusa Palms V Condominium, being part of Section 28, Township 45 South, Range 24 East, Lee County, Florida.
- 3. That the construction of the improvements to said Building 7, Calusa Palms V Condominium is substantially complete so that the survey and plans marked Exhibit "B" to the Declaration of Condominium for Calusa Palms V, together with the provisions of the Declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements, and so that the identification, location and dimensions of the common elements and of each Unit can be determined from these materials; and
- 4. That as to said Building 7, Calusa Palms V Condominium all planned improvements including but not limited to landscaping, utility service and access to Building 7, Calusa Palms V and common elements facilities serving the building have been substantially completed.

A. Trigo & Associates Inc.
Florida Business Authorization No. LB 3964



Antonio Trigo
Professional Surveyor and Mapper
Florida Certificate No. 2982

Date : 8/03/01
Not valid unless embossed with Professionals seal.

EXHIBIT "B"

State of Florida

Exhibit "C"



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of CALUSA PALMS V CONDOMINIUM ASSOCIATION, INC., a corporation organized under the laws of the State of Florida, filed on September 22, 2004, as shown by the records of this office.

The document number of this corporation is N04000009070.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Sixth day of June, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

**ARTICLES OF INCORPORATION
OF
CALUSA PALMS V CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.02011, Florida Statutes, these Articles of Incorporation are created by John Campbell, 2907 Bay to Bay Blvd., #301, Tampa, Florida 33629, as sole incorporator, for the purposes set forth below.

ARTICLE I

NAME: The name of the corporation, herein called the Association, is CALUSA PALMS V CONDOMINIUM ASSOCIATION, INC., and its address is 17595 S. Tamiami Trail, Suite 100, Ft. Myers, FL 33903.

ARTICLE II

DEFINITIONS: The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized as to provide an entity pursuant to the Florida Condominium Act for the operation of Calusa Palms V Condominium, located in Lee County, Florida. The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit except as specifically limited or modified by these Articles, the Declaration of Condominium or Chapter 718, Florida Statutes, as it may hereafter be amended, including without limitation the following powers and duties:

- (A) To levy and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property for the protection of the Association and its members.
- (D) To reconstruct improvements after casualty, and further improve the property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.

(F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, to the extent provided for in the Declaration of Condominium.

(G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any rules and regulations of the Association.

(H) To contract for the management and maintenance of the condominium property, and to delegate any powers and duties of the Association in connection therewith, except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.

(I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.

(J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

(K) To borrow money if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP:

(A) The members of the Association are all owners of record legal title to one or more units in the Condominium, as further provided in the Bylaws.

(B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.

(C) The owners of each unit, collectively, shall be entitled to one indivisible vote in Association matters, as further set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded as provided therein.

ARTICLES OF INCORPORATION

Page 3

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors shall be elected by the members in the manner determined by the Bylaws. Directors may be removed, and vacancies on the Board of Directors filled, in the manner provided in the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors, and they shall serve at the pleasure of the Board.

ARTICLE VIII

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

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Directors, or by written petition to the Board signed by the owners of at least one-fourth (1/4) of the units.

(B) Procedure. If any amendment to these Articles is so proposed, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

(C) Vote Required. Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the total voting interests of the Association at any annual or special meeting called for the purpose, or if it is approved in writing by a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains the text of the proposed amendment.

(D) Effective Date. An amendment which is duly adopted shall become effective upon filing with the Secretary of State, and subsequently recording a certified copy in the Public Records of Lee County, Florida, with the same formalities as required for the recording of an amendment to the Bylaws.

ARTICLE IX

INITIAL DIRECTORS: The Initial Directors of the Association shall be:

Jon Morris
2907 Bay to Bay Blvd., #301

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Page 4

Tampa, FL 33629

John Campbell
2907 Bay to Bay Blvd., #301
Tampa, FL 33629

Thomas Brunow
2907 Bay to Bay Blvd., #301
Tampa, FL 33629

ARTICLE X

INITIAL REGISTERED AGENT:

The initial registered office of the Association shall be at:

2907 Bay to Bay Blvd., #301
Tampa, FL 33629

The initial registered agent at said address shall be:

John Campbell

ARTICLE XI

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney=s fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be made a party because of his being, or having been, a Director or officer of the Association. The foregoing right to indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) 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.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.
- (E) Wrongful conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

ARTICLES OF INCORPORATION

Page 5

In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a Director or officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 7th day of Sept., 2004.

By: [Signature]
John Campbell

STATE OF FLORIDA
COUNTY OF Collier

The foregoing instrument was acknowledged before me this 17th day of September, 2004, by John Campbell. He is personally known to me or did produce _____ as identification.



[Signature]
Notary Public Signature

ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for the above-named corporation, at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity, and agree to comply with the provisions of the laws of the State of Florida, relative to keeping open said office.

[Signature]
John Campbell

Exhibit "C"

**BYLAWS
OF
CALUSA PALMS V CONDOMINIUM ASSOCIATION , INC.**

1. GENERAL. These are the Bylaws of Calusa Palms V Condominium Association, Inc., hereinafter the "Association," a Florida corporation not for profit organized for the purpose of operating a residential condominium pursuant to the Florida Condominium Act.

1.1 Principal Office. The principal office of the Association shall be at the Condominium or at such other place in Florida, as the Board of Directors may determine.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. The terms used herein shall have the same definitions as stated in the Declaration of Condominium to which these Bylaws are attached as an Exhibit.

1.4 Incorporation of Certain Statutes. The entire text of Paragraphs 718.112(2)(a) through (2)(m), Florida Statutes, is hereby incorporated within these Bylaws as though it was set forth at length, regardless of whether it actually appears.

2. MEMBERS. The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit solely for purposes of determining voting and use rights.

2.1 Qualification. Membership becomes effective upon the recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.

2.2 Voting Rights; Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of votes ("voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a condominium unit is owned by one natural person, that person may vote. If a unit is owned jointly by two or more persons, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves as to how their one vote shall be cast on any question, that vote shall not be counted on that question. If the owner of a unit is a corporation, the vote of that unit may be cast by the president or a vice president of the corporation. If a unit is owned by a partnership, its vote may be cast by any general partner.

2.3 Approval or Disapproval of Matters. Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the written joinder of all record owners is specifically required.

2.4 Termination of Membership. Termination of membership in the Association does not relieve or release any former member from liability or an obligation incurred under, or in any way connected with, the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. The annual meeting of the members shall be held in Lee County, Florida, each calendar year not later than the month of March, at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting all ballots cast in the annual election of Directors shall be counted and the election results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors. Special meetings may also be called by members having at least ten percent (10%) of the votes of the entire membership, provided that the notice of the meeting is signed by all the members calling the meeting. Business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings. Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the most recent address which appears on the books of the Association, or may be furnished by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must be posted on the condominium property, and mailed or delivered at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting, together with an agenda, shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda of the annual meeting shall also be sent by first class mail to each owner at least fourteen (14) days before the meeting, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may be delivered in person to any unit owner, instead of by mail, if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at a members' meeting is attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3rd) of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of members from a meeting does not affect the existence of a quorum for the remainder of that meeting.

3.6 Vote Required. The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater or different number of votes is required by law or by any provision of the condominium documents.

3.7 Proxy Voting. To the extent lawful, a person entitled to attend and vote at a members meeting is also entitled to establish a presence and vote by proxy.

(A) **Limited Proxies.** Only limited proxies may be used to vote by proxy on substantive issues such as whether to waive the funding of reserves or financial statement requirements, or whether to approve proposed amendments to the Condominium Documents, and for voting on all other substantive matters on which a vote of the members is required or permitted by law.

(B) **General Proxies.** General proxies may be used only to establish a quorum, for votes on procedural questions, and for voting on non-substantive amendments to proposals for which a limited proxy is being used.

A proxy is valid only for the specific meeting for which originally given, and any lawful reconvening of that meeting, and in no event for longer than ninety (90) days after the date of the meeting for which it was originally given. A proxy is always revocable at the pleasure of the person who signed it. To be valid, a proxy must be in writing and bear the dated signature of a person authorized to cast the unit's vote under Section 2.2 above. It must also specify the date, time and place of the meeting for which it is given. The original signed proxy (or a legal substitute for the original) must be filed with the Association at or before the time of the meeting (or reconvening of the meeting after an adjournment). Holders of proxies need not be Association members. A proxy that names more than one (1) natural person as proxyholder is invalid, but the proxyholder may, if the proxy expressly so provides, substitute another person to act as proxyholder.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time and place by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

3.9 Order of Business. The order of business at members' meetings shall be substantially as follows:

- (A) Call for and counting of ballots in annual election (if necessary)
- (B) Call of the roll or determination of quorum.
- (C) Reading or waiver of reading the minutes of the last members' meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.10 Minutes. Minutes of all meetings of the members, and of the Board of Directors, shall be kept in a businesslike manner, available for inspection by members or their authorized representatives at all reasonable times, and for at least seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian to advise on matters of procedure, but the decision of the

ACS

Presiding Officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

4.1 Number and Terms of Service. The number of Directors which shall initially constitute the whole Board shall be three (3) Directors appointed by the Developer. In order to provide for a continuity of experience by establishing a system of staggered terms of office, in the first election in which unit owners other than the Developer elect a majority of the Directors, the two (2) candidates receiving the highest number of votes shall each be elected for a term which expires at the annual election after the next annual election. The candidate receiving the next highest number of votes shall each be elected for a term which expires at the next annual election. Thereafter, all Directors shall be elected for two (2) year terms. A Director's term ends at the annual election at which his successor is to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in 4.4 below.

4.2 Qualifications. Except for Directors appointed by the Developer, each Director must be a member or the spouse of a member.

4.3 Elections. In each annual election the members shall elect, by written secret ballot, as many Directors as there are vacancies to be filled, unless the balloting is dispensed with as provided for by law.

(A) First Notice: Candidates. Not less than sixty (60) days before the election, the Association shall mail or deliver to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person wishing to be a candidate may qualify as such by giving written notice to the Association at least forty (40) days before the annual election. The candidate information sheet described in (B) below shall be provided to the Association by the candidate at least thirty-five (35) days prior to the meeting.

(B) **Second Notice; Candidate Information Sheets.** If there are more candidates than there are Directors to be elected, balloting is required. At least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election, together with the notice of the annual meeting, to all unit owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) in the mailing. The costs of mailing and copying the candidate information sheet are borne by the Association.

(C) **Balloting.** Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each unit shall have as many votes as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

(D) If for any reason there arise circumstances in which one or more Directors must be elected for a two-year term at the same time as another Director must be elected for a one-year term, the candidate receiving the most votes shall be elected to the longest term.

4.4 Vacancies on the Board. Except as otherwise provided by law for the filling of vacancies during the time when the Developer is entitled to appoint at least one Director, if the office of any Director becomes vacant for any reason, a successor or successors shall be appointed or elected as follows:

(A) If a vacancy occurs because of an increase in the number of Directors, or the death, disqualification, resignation, or for any other cause except recall of a majority or more of the Directors, a majority of the remaining Directors, even if less than a quorum, shall appoint a successor, who shall hold office until the next regularly scheduled election for any Board position, at which time a successor shall be elected to fill the remaining unexpired term, if any, unless otherwise provided by law.

(B) If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled in accordance with procedural rules of the Division of Florida Land Sales, Condominiums and Mobile Homes governing the method of selecting successors, and providing procedures for the operation of the Association during the period after the recall but prior to the designation of successor Directors sufficient to constitute a quorum.

4.5 Removal of Directors from Office. Any or all Directors, except those appointed by the Developer, may be removed from office with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

4.8 Notice to Owners. Except as otherwise provided below, all meetings of the Board of Directors must be open to attendance by unit owners. The right of owners to attend Board meetings includes the right to speak on all designated agenda items, subject to reasonable rules adopted by the Board of Directors governing the manner, duration and frequency of doing so. Notices of all Board meetings, together with an agenda of the business to be conducted, shall be posted conspicuously on the condominium property at least forty-eight (48) continuous hours in advance, except in an emergency, and subject to the following special circumstances:

(A) **Assessments to be Considered.** Notice of any Board meeting at which assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and disclose the nature of such assessments. Notice of any Board meeting at which a special assessment will be considered must also be posted in a conspicuous place on the condominium property and mailed to the owners of each unit at least fourteen (14) days before the meeting, except in an emergency, and an affidavit of mailing must be retained as proof of mailing.

(B) **Budget Meetings.** Notice of any Board meeting held to formally adopt a budget, or to amend a previously adopted budget, must be mailed to the unit owners as further provided in Section 6.2 below.

(C) **Meetings with Association Legal Counsel.** Meetings between either the Board, or a committee, and Association legal counsel, regarding proposed, impending or ongoing litigation, to the extent the meeting is held for the purpose of seeking or rendering legal advice regarding that litigation, may be held without notice to unit owners and may be closed.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting exists only when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to presence in person. Directors may not vote or participate in Board meetings by proxy or by secret ballot, except that officers may be elected by secret ballot.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted with the prevailing point

of view on every question, unless he voted against the question or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

4.12 Adjourned Meetings. The majority of the Directors present at any duly called meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

4.13 Presiding Officer. The President of the Association, or in his absence, the Vice President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as it deems necessary or convenient for the efficient and effective operation of the Condominium. A committee has only such powers and duties as are assigned to it in the Board resolution creating the committee. Meetings of a committee for the purpose of taking final action on behalf of the Board, or to make recommendations to the Board regarding a budget, must be noticed and conducted with the same formalities as are required for Board meetings in Section 718.112(2)(c), Florida Statutes (2004), as amended. Meetings of committees that do not take final action on behalf of the Board, or make recommendations to the Board regarding a budget, are exempt from this requirement. Meetings between a committee and Association legal counsel are exempt to the extent of the attorney-client privilege.

4.16 Emergency Powers. In the event of any "emergency" as defined in Section 4.16(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida (2004), as amended from time to time.

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

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

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

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

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

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

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

- (1) a state of emergency declared by local civil or law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order
- (4) federal or state "disaster area" status; or
- (5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

5. OFFICERS. The executive officers of the Association shall be a President and a Vice President, who must be Directors, and a Treasurer and a Secretary, all of whom shall be elected by a majority vote of the Board of Directors. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice President. Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the resignation shall become effective upon receipt.

5.1 President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the members and Directors; shall be *ex officio* a member of all standing committees; shall have general and active management of the business of the Association; and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.2 Vice Presidents. The Vice Presidents, in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.3 Secretary. The Secretary shall attend meetings of the Board of Directors and of the members and cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the members, and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is elected.

5.4 Treasurer. The Treasurer shall be responsible for Association funds and securities, budget preparation, and the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is elected.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following:

6.1 Depository. The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of funds from such accounts shall be only by persons authorized by the Board.

6.2 Budget. The Board of Directors shall adopt in advance a budget of common expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to or served on the owners of each unit not less than fourteen (14) days before that meeting, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.504 of the Condominium Act.

6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the vote at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 6.2 above. The funds in a reserve account established under this Section 6.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for

another purpose is approved in advance by a majority of the voting interests, voting in person or by limited proxy at a meeting of the Association called for the purpose.

6.4 Operating Reserves. In addition to the statutory reserves described in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, minor improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

6.5 Assessments; Installments. Regular annual assessments based on an adopted budget shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each unit's next due quarterly installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

6.7 Fidelity Bonds. The President, Secretary and Treasurer, and all other persons who are authorized to sign checks, shall be bonded in at least such amounts as may be required by law. The cost of such bonds is a common expense.

6.8 Financial Reports. The Board shall prepare or cause to be prepared and distributed to the owners of each unit pursuant to Section 718.111(13) of the Condominium Act, a report showing in reasonable detail the financial condition of the Association as of the close of the fiscal year, and an income and expense statement for the year, detailed by accounts.

6.9 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

7. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following shall apply:

8.1 Fines. The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the Condominium Documents, or the rules and regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law, and no fine may be levied against an unoccupied unit. The procedure for imposing fines shall be as follows:

(A) **Notice:** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A specific designation of the provisions of the Declaration, Bylaws or rules that are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine.

(B) **Hearing:** At the hearing the party sought to be fined shall have a reasonable opportunity to respond, to present evidence, to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the panel, by majority vote does not agree with the fine, it may not be levied.

8.2 Mandatory Non-Binding Arbitration. In the event of any dispute as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes before filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

8.3 Availability of Remedies. Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the right of the majority to enjoy the condominium property free from unreasonable disruptions and annoyance by the minority.

9. TRANSFER OF ASSOCIATION CONTROL; DEVELOPER'S RIGHTS.

9.1 Members' Rights to Elect Directors. When owners other than the Developer own fifteen percent (15%) or more of the units, the owners other than the Developer shall be entitled to elect one-third (1/3rd) of the members of the Board of Directors. Unit owners other than the Developer become entitled to elect a majority of the members of the Board of Directors upon the first of the following events to occur:

(A) Three years after fifty percent (50%) or more of the units that will be operated ultimately by the Association have been conveyed to purchasers;

(B) Three months after ninety percent (90%) or more of the units that will be operated ultimately by the Association have been conveyed to purchasers;

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

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

(E) Seven (7) years after the Declaration of Condominium was recorded.

9.2 Developer's Right to Designate Directors. Except as provided above, the Developer shall be entitled to designate at least one Director as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the units.

9.3 Notice of Election. Within seventy-five (75) days after unit owners other than the Developer are entitled to elect one or more Directors, the Association shall call, upon not less than sixty (60) days notice, a meeting of the members, and an election in which the unit owners shall elect the Directors that the unit owners are entitled to elect. The election, and the meeting in conjunction with which the election is to be held, may be called, and the notice given, by any unit owner if the Association fails to do so. All non-developer unit owners may vote in the election of Directors. The meeting in conjunction with which unit owners other than the Developer first elect a majority of the Directors is commonly referred to as the "turnover meeting."

9.4 Transfer of Association Control. By electing at least a majority of the Directors of the Association, the unit owners other than the Developer assume control. At that time the Developer must deliver to the Association all property of the unit owners, and of the Association, held or controlled by the Developer, and all items and documents that the Developer is required to deliver or turn over to the Association under Florida law. The Developer may turn over control of the Association to unit owners other than the Developer before the times mentioned in Section 9.1 above, in its sole discretion, by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if unit owners other than the Developer refuse or fail to assume control.

10. AMENDMENT OF BYLAWS. Except as otherwise provided in the Declaration of Condominium, amendments to these Bylaws may be proposed and adopted in the following manner:

10.1 Proposal. Amendments to these Bylaws may be proposed by a majority of the Board, or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

10.2 Procedure. Upon any amendment to these Bylaws being proposed by said Board or unit owners, the proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.

10.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, these Bylaws may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that notice of the amendment has been given to the members in accordance with law.

10.4 Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium is recorded.

11. MISCELLANEOUS.

11.1 Gender; Number. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

11.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

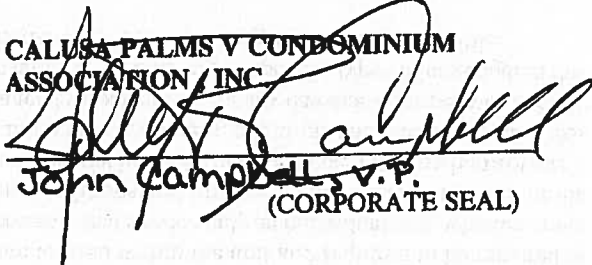
11.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

11.4 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 condominium units to the applicable fire and life safety code.

The foregoing constitute the first Bylaws of Calusa Palms V Condominium Association, Inc., and were duly adopted at a meeting of the Board of Directors held on October 15, 2004.

Date: October, 16, 2004.

CALUSA PALMS V CONDOMINIUM
ASSOCIATION, INC.


John Campbell, V.P.
(CORPORATE SEAL)