

2144953 OR: 2279 PG: 1448

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
02/04/97 at 09:34AM DWIGHT E. BROCK, CLERK

REC FEE 316.50

Retn:

PHILIP M FRANCOEUR JR
2375 TAMiami TR N #308
NAPLES FL 34103

COPY

DECLARATION OF CONDOMINIUM

FOR

BERKSHIRE LANDINGS, A CONDOMINIUM

PREPARED BY:

DANIEL D. PECK, ESQUIRE
PECK, SKRIVAN & FAGA
SUITE 103
5801 PELICAN BAY BOULEVARD
NAPLES, FLORIDA 33963
(941) 566-3600

TABLE OF CONTENTS

1. <u>THE LAND</u>	1
2. <u>SUBMISSION STATEMENT</u>	1
3. <u>NAME</u>	1
3.1 Declaration Binding	1
3.2 Construction of Declaration	1
4. <u>DEFINITIONS</u>	1-3
4.1 Assessment	1
4.2 Association	1
4.3 Board of Directors	2
4.4 By-Laws	2
4.5 Common Expenses	2
4.6 Condominium	2
4.7 Condominium Documents	2
4.8 Family	2
4.9 Fixtures	2
4.10 Guest	2
4.11 Institutional First Mortgagee	2
4.12 Lease	2
4.13 Limited Common Elements	2
4.14 Occupant or Occupy	2
4.15 Primary Institutional Mortgagee	2
4.16 Primary Occupant	2
4.17 Reasonable Attorney's Fees	3
4.18 Rules and Regulations	3
4.19 Unit	3
5. <u>DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS</u>	3-4
5.1 Survey and Plot Plans	3
5.2 Conveyance of Units	3
5.3 Unit Boundaries	3-4
A. Upper and Lower Boundaries	3
1. Upper Boundaries	3
2. Lower Boundaries	3
B. Perimetrical Boundaries	3
C. Apertures	3
D. Exclusions	4
6. <u>CONDOMINIUM PARCELS; APPURTENCES AND USE</u>	4
6.1 Appurtenances to Each Unit	4
A. Ownership	4
B. Membership	4
C. Right to use Common Elements	4
D. Easements	4
E. Other Appurtenances	4
6.2 Use and Possession	4
7. <u>COMMON ELEMENTS; EASEMENTS</u>	4-7
7.1 Definition	4
A. Land	4
B. Building	4-5
C. Easements	5
D. Supply of Services	5
E. Other Common Elements	5
7.2 Easements	5
A. Utilities	5
B. Encroachments	5
C. Ingress and Egress	5-6
D. Construction; Maintenance	6
E. Developer Approval	6
F. Support	6
G. Perpetual Non-Exclusive Easement in Common Elements	6

H. Right of Entry into Units	6
I. Air Space	6
J. Sales Activity	6-7
8. <u>LIMITED COMMON ELEMENTS</u>	
8.1 Description of Limited Common Elements	7
A. Windows and Doors	7
B. Screened Lanais	7
9. <u>ASSOCIATION</u>	
9.1 Articles of Incorporation	7-8
9.2 By-Laws	7
9.3 Delegation of Management	7
9.4 Membership	7
9.5 Acts of Association	7
9.6 Powers and Duties	7-8
9.7 Fiscal Matters	8
9.8 Purchase of Units	8
9.9 Roster	8
9.10 Limitation on Liability	8
9.11 Fees for Processing Applications for Approval to Sell	8
10. <u>ASSESSMENTS AND LIENS</u>	8-11
10.1 Common Expenses	8-9
10.2 Share of Common Expenses	9
10.3 Rights to Assessments	9
10.4 Liability for Assessments	9
10.5 No Waiver	9
10.6 Excuse from Payment	9
10.7 Failure to Pay; Interest	9
10.8 Liens	9
10.9 Priority of Lien	9-10
10.10 Foreclosure of Lien	10
10.11 Transfer of Ownership of Foreclosed Unit	10
10.12 Mortgage Foreclosure	10
10.13 Certificate of Assessments	10
10.14 Liability of Developer for Common Expenses	10-11
11. <u>MAINTENANCE; LIMITATION UPON ALTERATION AND IMPROVEMENT</u>	11-13
11.1 Units	
A. By the Association	11
B. By the Unit Owner	11
11.2 Maintenance Contracts	
A. By the Association	12
B. Decorating	12
C. Alteration to Units and Common Elements by Unit Owners	12
D. Exterior Appearance	12
E. Alterations	12
11.3 Common Elements	12
11.4 Enforcement of Maintenance	13
11.5 Negligence; Damage Caused by Condition in Unit	13
11.6 Nuisance	13
12. <u>USE RESTRICTIONS</u>	13-14
12.1 Units	13-14
12.2 Occupancy Limitation	14
12.3 Pets	14
12.4 Display	14
12.5 Parking	14
12.6 Common Elements	14
12.7 Flooring	14
13. <u>TRANSFER OF OWNERSHIP OF UNITS</u>	14-17
13.1 Forms of Ownership	
A. Natural Person	14-15
B. Ownership by Corporations or Trusts	15
C. Life Estate	15

OR: 2279 PG: 1450

600065

13.2 Transfers	
A. Sale or Gift	15
B. Devise or Inheritance	15
C. Other Transfers	15
D. Committee Approval	15
13.3 Procedures	
A. Notices to the Association	
1. Sale or Gift	15-16
2. Devise, Inheritance or Other Transfers	16
3. Failure to Give Notice	16
B. Board Action	16
C. Disapproval	
1. Procedure	16
2. Disapproval	16
13.4 Exception	16-17
13.5 Unapproved Transfers	17
14. <u>LEASING OF UNITS</u>	17
14.1 Restrictions on Leasing	17
14.2 Occupancy During Lease Term	17
14.3 Occupancy in Absence of Lessee	17
14.4 Regulation by Association	17
15. <u>INSURANCE</u>	17-19
15.1 Duty and Authority to Obtain	17
15.2 Required Coverage	17-18
A. Property	18
B. Flood Insurance	18
C. Liability	18
D. Compensation	18
E. Fidelity Bonds	18
15.3 Description of Coverage	18
15.4 Waiver of Subrogation	18
15.5 Insurance Proceeds	18-19
A. Common Elements	18
B. Units	18-19
1. Partial Destruction, When the Buildings are to be Restored	18
2. Total Destruction of the Buildings or When the Buildings are not to be Restored	19
3. Mortgagee	19
15.6 Distribution of Proceeds	19
A. Cost of Reconstruction or Repair	19
B. Failure to Reconstruct or Repair	19
15.7 Association as Agent	19
16. <u>RECONSTRUCTION OR REPAIR AFTER CASUALTY</u>	19-21
16.1 Damage to Units Only, Not Common Elements	19
16.2 Damage to Common Elements-Less than "Very Substantial"	19
A. Estimates	19
B. Contract	20
C. Insufficient Insurance	20
16.3 "Very Substantial" Damage	20
A. Estimates	20
B. Membership Decision	20
1. Insurance Sufficient	20
2. Insurance Not Sufficient	20
C. Dispute	20
16.4 Application of Construction Funds	20
16.5 Equitable Relief	20-21
16.6 Plans and Specifications	21
17. <u>CONDEMNATION</u>	21-22
17.1 Deposit of Awards With Association	21
17.2 Determination Whether to Continue Condominium	21
17.3 Disbursement of Funds	21
17.4 Association as Agent	21

600065

17.5 Units Reduced But Tenantable	21
A. Restoration of Unit	21
B. Distribution of Surplus	21
17.6 Unit Made Untenantable	21-22
A. Payment of Award	22
B. Addition to Common Elements	22
C. Adjustment of Shares in Common Elements	22
D. Assessments	22
E. Arbitration	22
17.7 Taking of Common Elements	22
17.8 Amendment of Declaration	22
18. TERMINATION	22-23
18.1 Agreement	22
18.2 Very Substantial Damage	22-23
18.3 General Provisions	23
18.4 New Condominium	23
18.5 Partition; Sale	23
18.6 Last Board	23
18.7 Provisions Shall Survive	23
19. OBLIGATION OF OWNERS	23-24
19.1 Actions	23-24
19.2 Waiver	24
19.3 Attorney's Fees	24
19.4 No Waiver	24
19.5 No Election of Remedies	24
20. RIGHTS OF MORTGAGEES	24-25
20.1 Approvals	24
20.2 Notice	24
20.3 Redemption	24
20.4 Right to Inspect Books	24-25
20.5 Lender's Notices	25
21. DEVELOPER'S RIGHTS AND DUTIES	25-26
21.1 Developer's Use	25
21.2 Assignment	25
21.3 Amendment of Plans and Alteration of Boundaries and Apartment Dimensions	25
21.4 Amendments by Developer	25
21.5 Requirements of Amendment	25-26
21.6 Sales or Leases of Units	26
21.7 Turnover	26
22. AMENDMENT OF DECLARATION	26-27
22.1 Proposal	26
22.2 Vote	26
22.3 Requirements	26
22.4 Recordation	26
22.5 Restrictions on Amendment	26
22.6 Enlargement of Common Elements	27
22.7 Correction of Errors	27
22.8 Amendment of Provision Relating to Developer	27
23. MISCELLANEOUS	27
23.1 Severability	27
23.2 Applicable Statutes	27
23.3 Conflicts	27
23.4 Interpretation	27
23.5 Exhibits	27

OB: 2279 PG: 1452

6000070

DECLARATION OF CONDOMINIUM FOR
BERKSHIRE LANDINGS, A CONDOMINIUM

This Declaration of Condominium is made this 3rd day of January, 1997 by Sunset 12, Inc., a Florida corporation, (hereafter referred to as the "Developer") as owner of the real property hereafter described and developer of the improvements erected or to be erected thereon, for itself, its successors, grantees, and assigns or their transferees.

The Developer, as owner, makes the following declarations.

1. THE LAND: Developer owns title to certain lands lying in Collier County, Florida, hereafter referred to as "the land" subject to conditions, restrictions, limitations, easements, and reservations of record and described in "Exhibit A" which contains descriptions of the condominium and is attached hereto and made a part hereof.

2. SUBMISSION STATEMENT: The Developer hereby submits the land described in Exhibit A and all improvements erected or to be erected thereon, all easements, rights, and appurtenances belonging thereto, and all other property intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof, excluding, however, all public utility installations, cable television lines, and other similar equipment owned by utilities furnishing services to the Condominium.

3. NAME: The name by which this Condominium is identified is "Berkshire Landings, A Condominium", (hereafter referred to as "the Condominium").

3.1 Declaration Binding. Unless this Declaration is terminated pursuant to the Condominium Act or as provided herein, the covenants and restrictions contained in this Declaration perpetually run with the land and are binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any 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 an agreement to be bound by its terms.

3.2 Construction Of Declaration. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

4. DEFINITIONS: The terms used in this Declaration and its exhibits, the Articles of Incorporation, the By-Laws and the Rules and Regulations of Berkshire Landings, A Condominium, have the meanings stated herein and in Chapter 718, Florida Statutes, unless the context otherwise requires. The use of any gender is deemed to include all genders, the use of the plural includes the singular, and the singular includes the plural.

4.1 "Assessment" means a share of the funds required for the payment of common expenses, which from time to time are assessed against the owner of a unit.

4.2 "Association" means BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which is the entity responsible for the operation of the Condominium.

4.3 "Board Of Directors" or "Board" means the representative body which is responsible for the administration of the Association, and is the same body referred to in the Condominium Act as the "Board of Administration."

4.4 "By-Laws" means the By-Laws of the Association existing from time to time.

4.5 "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium.

4.6 "Condominium" means that form of ownership of real property which is created pursuant to Florida condominium law and which is comprised of units that may be owned by one or more persons, with appurtenant to each unit an undivided share in the common elements.

4.7 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.8 "Family" means the owner or primary occupant of a unit, and other natural persons related to each other by blood, marriage or adoption, or not more than four persons not so related, who regularly reside together as a single housekeeping unit.

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

4.10 "Guest" means any person (other than the unit owner or his family) who is physically present in, or occupies a unit on a temporary basis at the invitation of the unit owner or primary occupant, without the payment of consideration.

4.11 "Institutional First Mortgagee" means the holder of a first mortgage against a condominium parcel, which holder is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, any agency of the United States of America including FHA or VA or the holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured by any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring first mortgage loans, and its successors and assigns.

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

4.13 "Limited Common Elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.14 "Occupant" or "Occupy" when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.15 "Primary Institutional Mortgagee" means that institutional mortgagee which, at any given time, holds first mortgages on more units in the condominium than any other institutional mortgagee.

4.16 "Primary Occupant" means the one natural person and that person's spouse approved for occupancy when title to the unit is held in the name of a trust, corporation or other entity.

4.17 "Reasonable Attorney's Fees" means and includes reasonable fees for the services of attorneys at law whether judicial or administrative proceedings are involved, and if judicial or administrative proceedings are involved, then all review of the same by appeal or otherwise.

4.18 "Rules And Regulations" means the rules and regulations promulgated by the Board of Directors, as they may exist from time to time, concerning the use of the condominium and common elements.

4.19 "Unit" means a part of the condominium property which is subject to exclusive ownership as specified in the Declaration of Condominium.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 Survey And Plot Plans. Attached hereto and made a part hereof as "Exhibit B" is a site plan consisting of a plot plan with floor plans, which graphically describes the improvements in which units are located, including their identification numbers, locations and approximate dimensions, the common elements and limited common elements and their locations and dimensions, and attached as "Exhibit C" is a survey of the land. The legal description of a unit consists of the identifying number of such unit as shown on "Exhibit B" together with the recording data identifying the Declaration. The condominium consists of twelve units, Units 101, 102, 103, 104, 105, 106, 201, 202, 203, 204, 205 and 206, all of which are 3 bedroom 2 bathroom units. Each unit also includes within its description a one car garage attached to the unit and a part thereof. There is one swimming pool which is a common element.

5.2 Conveyance Of Units. Completed units which have received a certificate of occupancy may be conveyed if within a substantially completed building provided that all planned improvements including landscaping, utility services and access to the unit and common elements facilities servicing the building in that phase are completed, and this Declaration is recorded with a certificate of surveyor.

5.3 Unit Boundaries. Each unit includes its garage and that part of the building that lies within the following boundaries:

A. Upper And Lower Boundaries. The upper and lower boundaries of the unit are the following boundaries extended to their planar intersections with the perimetrical boundaries.

(1) Upper Boundaries. In all units, the upper boundary is the horizontal plane of the unfinished lower surface of the ceiling.

(2) Lower Boundaries. Lower boundaries consist of the horizontal plane of the unfinished upper surface of the concrete floor of the unit.

B. Perimetrical Boundaries. The perimetrical boundaries of the unit are the vertical planes of the unfinished exterior surfaces of the walls bounding the unit including its garage, extended to their planar intersections with each other and with the upper and lower boundaries.

C. Apertures. Where there are apertures in any boundary, including but not limited to windows or doors, such boundaries extend to the interior or unfinished surfaces of such apertures, and all frameworks thereof.

D. Exclusions. A unit does not include interior bearing walls or partitions and does not include pipes, ducts, wires, conduits and other utilities running through any interior wall or partition for furnishing of utility services to other units or to the common elements.

In cases not specifically covered in this Section 5.3, or in any case of conflict or ambiguity, the Exhibits attached hereto control in determining the boundaries of a unit, except the provisions of Section 5.3(C) shall control over such Exhibits, and any requirements of Florida condominium law control over this Section 5.3 and the Exhibits.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1 Appurtenances To Each Unit. The owner of each unit has certain rights and owns a certain interest in the condominium property, including but not limited to the following items.

A. Ownership. Ownership of the unit together with an undivided share in the land and other common elements as specifically set forth above.

B. Membership. Membership in the Association is acquired pursuant to the provisions of the Articles of Incorporation and By-Laws of the Association attached hereto as "Exhibits D and E", respectively.

C. Right To Use Common Elements. The exclusive right to use the unit and limited common elements reserved for the unit, and the non-exclusive right to use the common elements.

D. Easements. 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 vacated is terminated automatically.

E. Other Appurtenances. Other appurtenances that may be provided in this Declaration and its exhibits and Florida condominium law.

6.2 Use And Possession. A unit owner is entitled to exclusive use and possession of the unit owned. The owner is entitled to use the common elements in accordance with the purposes for which they are intended, 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 is governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, in the manner set forth in the By-Laws, and by Florida condominium law.

7. COMMON ELEMENTS; EASEMENTS:

7.1 Definition. The term "common elements" means all portions of the condominium property not included within the units, and includes without limitation the following:

A. Land. The land upon which the improvements are located is a common element.

B. Building. All portions of the buildings and other improvements not included within the units are common elements,

including the swimming pool and bathhouse, any air conditioning and heating equipment located outside a unit, and parking spaces (except the one car attached garage which is a part of its unit).

C. Easements. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units and the common elements, and an easement of support in every portion of a unit which contributes to the support of a building are common elements.

D. Supply Of Services. The property and installments required for furnishing utilities and other services to more than one unit or to the common elements are common elements.

E. Other Common Elements. Any other parts of the condominium property designated as common elements in this Declaration or any recorded exhibit thereto or under Florida condominium law also constitute common elements.

7.2 Easements. Each of the following easements and easement rights are reserved through the condominium property and are covenants running with the land of the condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and survive the exclusion of any of the lands of the condominium from the condominium. None of the following easements may be encumbered by any lease or lien other than those on the condominium property.

A. Utilities. The Association, on behalf of all unit owners, has the right to grant such electric, gas, cable television, telephone, water, sewer, electronic security, or other service easements, or relocate any existing easements or drainage easements or facilities, and to grant access easements or relocate any existing access easements in any portion of the condominium property as the Board of Directors deems necessary or desirable for the proper operation and maintenance of the condominium, or any portion thereof, or for the general health or welfare of the unit owners. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the reasonable use of the units for their intended purposes. The Association has the right to transfer title to utility related equipment, facilities or material to any public utility company or governmental agency which is assuming the obligation to maintain such equipment, facilities or material. In connection with the foregoing, bills of sale may be granted for items of personal property owned or governed by the Association. The Association also has the authority to take any other action, on behalf of itself and all unit owners (as such owners' attorney in fact), to satisfy the requirements of any public utility company or governmental agency to which any such utility related equipment, facilities or material are to be so transferred. The Association has the right to maintain private sewer or water lines for the benefit of the unit owners. If such private lines are maintained they will be common elements of the condominium.

B. Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason (including perimeter walls, ceilings, floors and gutters) other than by the intentional act of a unit owner, or if any common element encroaches upon any unit, then an easement exists to the extent of that encroachment for so long as the encroachment exists.

C. Ingress And Egress. A non-exclusive easement exists 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. None of the easements specified in this paragraph shall be encumbered by any leasehold or lien other than those on the condominium parcels. Any such lien encumbering such easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

D. Construction; Maintenance. The Developer, its designees and contractors (for as long as it holds units for sale in the ordinary course of business) have the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or to make any improvements on units located or to be located thereon, and for repair, replacement and maintenance purposes, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the unit owners of the condominium property.

E. Developer Approval. Notwithstanding anything in the Declaration to the contrary, while the Developer holds units for sale in the ordinary course of business, the Developer may not be assessed as an owner for capital improvements and any action by the Association that would be detrimental to the sale of units by Developer is prohibited. The determination as to what constitutes detrimental action or capital improvements shall be in the sole discretion of the Developer; provided, however, that an increase in assessments for Common Expenses without discrimination against Developer shall not be deemed to be detrimental to the sale or lease of units.

F. Support. Every portion of a unit contributing to the support of the condominium building or an adjacent unit is burdened with an easement of support for the benefit of all other units and common elements in the building.

G. Perpetual Non-Exclusive Easement In Common Elements. The common elements are subject to a perpetual non-exclusive easement in favor of all of the owners of units in the condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners.

H. Right Of Entry Into Units. In case of an emergency originating in or threatening any unit, or the common elements, or to protect, maintain, repair or replace the common elements and for other purposes, and as permitted by law, including for pest control, regardless of whether the owner is present at the time, the Board of Directors of the Association, or any other person authorized by it, or the building manager or managing agent, has the right but not the duty to enter such unit for the purposes stated above. Such right of entry shall be immediate and to facilitate entry, the owner of each unit, if required by the Association, shall deposit under the control of the Association a key to the owner's unit, and shall not alter or install a lock which prevents access to an unoccupied unit. Any access shall be with prior notice where practical and with due respect for the owner's right to privacy and freedom from undue annoyance, and with appropriate precautions to protect the owner's property.

I. Air Space. There exists an exclusive easement for the use of the air space occupied by a condominium unit as it exists at any particular time and as the unit may lawfully be altered.

J. Sales Activity. For as long as it holds units for sale in the ordinary course of business, the Developer and its designees, or a successor Developer, if applicable, have the right

to use, without charge, any unsold units and the common elements (including, but not limited to, all recreational facilities) in order to establish, modify, maintain and utilize, as it deems appropriate, model units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show unsold units or the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the condominium.

8. LIMITED COMMON ELEMENTS:

8.1 Description Of Limited Common Elements: Certain common elements have been designated as limited common elements, reserved for the use of a particular unit or units at any one time, to the exclusion of other units. The limited common elements and the units to which their use has been designated are as described in this Article and as further identified on the attached survey and plot plan. The Association is hereby granted the authority to assign any limited common elements Developer fails to assign and to reassign any limited common elements which Developer assigned by any means other than a recorded instrument. The following common elements are hereby designated as limited common elements.

A. Windows And Doors. The windows and doors, including sliding glass doors and door and window screens, including all hardware and framings thereof, of each unit are limited common elements for the exclusive use of the unit they serve and shall be maintained, repaired, and replaced solely at the expense of the unit owner.

B. Screened Lanais. The screened lanais for a unit are limited common elements appurtenant to that unit as set forth in Exhibit B hereto.

9. ASSOCIATION: In order to provide for the effective administration of this condominium by the unit owners, the operation and management of the condominium is by BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which performs 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 D", as may be amended.

9.2 By-Laws. The By-Laws of the Association are the By-Laws of the condominium and are attached as "Exhibit E", as may be amended.

9.3 Delegation Of Management. The Association may contract for the management and maintenance of the condominium property and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the common elements, with funds made available by the Association for such purposes in accordance with applicable law.

9.4 Membership. The membership of the Association is comprised of the record fee owners of the condominium units, as further provided in the By-Laws.

9.5 Acts Of Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some

provision of condominium law or the Condominium Documents, all approvals or actions permitted or required to be given may be 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 the 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 under Florida condominium law and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property. The Board of Directors may mortgage, sell, encumber or dispose of assets owned by the Association.

9.7 Fiscal Matters. The Association shall maintain its official records according to the requirements of law. The records are open to inspection by unit owners or their authorized representatives at reasonable times in accordance with the standards set forth in the Association's By-Laws and applicable law.

9.8 Purchase Of Units. The Association has the power to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them, subject to the approval of a majority of the Directors.

9.9 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster is available to any unit owner upon request.

9.10 Limitation On Liability. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association is not liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements, unit owners or by other persons.

9.11 Fees For Processing Applications For Approval To Sell. The Association has the right to charge application or transfer fees to the extent permitted by law to cover expenses related to the processing of applications for approval of transfers of ownership of units in situations where Association approval is specifically required by the Condominium Documents.

10. ASSESSMENTS AND LIENS: The Association has the power to make and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the condominium and for the operation of the Association. The power of the Association to make and collect assessments includes regular assessments for each unit's share of the common expenses as established by the annual budget, special assessments for non-recurring or unbudgeted common expenses, and special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Association's By-Laws. Such assessments are made and enforced as provided by law and as follows. (Special charges against an individual unit for other than common expenses are not collectible through the lien process.)

10.1 Common Expenses. Common expenses include all the expenses of the operation, maintenance, repair or replacement of the common elements, insurance, the expenses of administrating and operating the Association and any other expenses properly incurred by the Association for the condominium, including any amounts by

budgeted for the purpose of funding reserve accounts. The cost of water, sewer and refuse service and any bulk service basic cable television contract or electronic or other security service to the units is a common expense.

10.2 Share Of Common Expenses. Each unit owner is liable for that unit's 1/12 proportionate share of the common expenses, the share being the same share as the ownership of the common elements, and each unit owner shares in the common surplus in the same proportion. Such right does not vest or create in any unit owner the right to withdraw or receive a distribution of the unit's share of the common surplus, except as otherwise provided herein.

10.3 Rights To Assessments. Assessments collected by 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 the unit.

10.4 Liability For Assessments. The owner of each unit, regardless of how title was acquired, including a purchaser at a judicial sale, is liable for all assessments due while owning the unit. Multiple owners are jointly and severally liable. Except as provided in Section 10.12 below, whenever title to a unit is transferred for any reason, the grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor, for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee.

10.5 No Waiver. The liability for assessments may not be avoided or abated by waiver, either voluntary or involuntary, 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 common elements for any reason.

10.6 Excuse From Payment. No unit owner is excused from payment of the unit's share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to first mortgagees and the Developer.

10.7 Failure To Pay; Interest. Assessments and installments thereon paid on or before ten days after the date due shall not bear interest. If payment of the full amount due is not made within this period, interest accrues on the amount due from the date payment was first due (without regard to any extensions) at the annual rate of 18 percent. There is an administrative late fee, in addition to such interest, for an amount equal to the greater of \$25.00 or 5 percent of each assessment due for which payment is late. Such administrative late fee will accrue on the eleventh day following the date payment was first due (without regard to any extensions) if payment is not made prior to that time. Any payment received by the Association, then to any first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent restrictive endorsement, designation, or instruction placed on or accompanying a payment. Assessments and installments thereon become due and the unit owner shall become liable for said assessments or installments on the date set by the Association for payment.

10.8 Liens. The Association has a lien on each condominium parcel for any unpaid assessments, including interest, and for 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 Collier County, Florida, stating the description of the

condominium parcel, the name of the record owner, the amount due and due dates together with the name and address of the Association. The lien is in effect until barred by law. The Claim of Lien includes all assessments coming due until the entry of a foreclosure judgment. If any special assessment or installment of a regular assessment for 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 assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the Public Records. Upon full payment of all amounts due, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority Of Lien. The Association's lien for unpaid assessments is subordinate and inferior to a recorded first mortgage, unless the Association's Claim of Lien was recorded prior to the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.10 Foreclosure Of Lien. The Association may bring an action in its name to foreclose a lien for unpaid assessments in the manner provided under Florida condominium law, may recover all rents for a unit up to the amount of any unpaid assessments, plus interest, costs and attorneys' fees and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 Transfer Of Ownership Of Foreclosed Unit. If a foreclosure action is brought against the owner of a condominium parcel and the interest of the owner in the condominium parcel is sold, the condominium owner's membership shall be cancelled and the membership shall be issued to the purchaser at the foreclosure sale.

10.12 Mortgage Foreclosure. If the mortgagee of a first mortgage of record or other purchaser of a condominium unit acquires title to a condominium parcel as a result of foreclosure of the first mortgage, or as the result of a deed given in lieu of foreclosure, if the Association Claim of Lien was recorded prior to the foreclosed mortgage then such acquirer of title and its successors and assigns are liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. If the Association's Claim of Lien was recorded after the foreclosed first mortgage, then the first mortgagee's liability is limited as provided by Florida law. Any unpaid share of common expenses or assessments from which such acquirer is exempt from liability becomes a common expense collectible by special assessment from all of the unit owners, including such acquirer and the successors and assigns of the acquirer. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, be excused from the payment of any assessments due during the period of such ownership.

10.13 Certificate Of Assessments. Any owner or prospective purchaser has the right to require from the Association a certificate, within fifteen (15) days after a written request, showing the amount of unpaid assessments against the condominium parcel. The holder of a mortgage or other lien has the same right as to any condominium parcel upon which it has a lien.

10.14 Liability Of Developer For Common Expenses. The Developer guarantees that from the recording of this Declaration until unit owners other than Developer elect a majority of Directors, monthly assessments against unit owners for common expenses will not exceed \$180 per month during the first year of

association operations and will not exceed \$200 per month during the second year of Association operations. For purposes of this section 10.14, the first year of operation of the Association shall begin June 1, 1996 and continue for twelve calendar months thereafter, at which time (June 1 1997) the second year of operation will begin. The foregoing notwithstanding, the above maximum assessments shall not apply to any year in which unit owners other than Developer elect a majority of Directors. During this period, Developer and all units owned by the Developer are not subject to assessment for common expenses as provided herein. Instead, the Developer shall be assessed and pay to the Association at least quarterly a sum equal to the amount of all actual expenses incurred by the Association during the quarter, less an amount equal to the total assessments made by the Association in the same quarter against unit owners other than the Developer. All deficits during this guarantee period will be paid not later than thirty days after the end of the period.

11. MAINTENANCE; LIMITATION UPON ALTERATION AND IMPROVEMENT: Responsibility for the maintenance of the condominium property and restrictions on its alteration and improvement are as follows, in addition to those imposed by law.

11.1 Units.

A. By The Association. The Association shall maintain, repair and replace at the Association's expense all portions of the unit (including its garage) that contribute to the support of the building, including but not limited to the perimeter walls, columns, roof and floors. The Association shall also maintain, repair and replace perimeter walls that do not contribute to the support of the building, wiring, piping, ductwork and other mechanical or electrical or other installations or equipment, including those for water and sewer, serving the common elements or more than one unit not elsewhere required to be maintained by the unit owners, air conditioning and heating equipment located outside of individual units, caulking and weatherstripping on the exterior of a unit, not elsewhere required to be maintained by a unit owner, and water supply shut-off valves for the units. The Association may maintain and repair sewer or water lines which are owned by the unit owners as common elements. If, however, any such maintenance, repair or replacement becomes necessary because of the negligence, act or omission of a unit owner, or because of the unit owner's family, lessees, invitees or guests, then the work may be done by the Association at the expense of the unit owner, and the cost shall be recovered by a charge to the unit owner. All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association, which may restore the unit as nearly as practical to its condition before the damage.

B. By The Unit Owner. The responsibilities of the unit owner for maintenance are those imposed by applicable law and as follows. Each unit owner is responsible, at the owner's expense, for all maintenance, repairs, and replacements for the owner's unit and screened lanai, for all window glass, screening and doors, including sliding glass doors, shutters (including hurricane shutters), floor covering, and of such portions of the plumbing, heating and air conditioning equipment and other facilities or fixtures as are located entirely within the owner's unit and for the interior of the attached garage. Any insurance proceeds payable to the Association with respect to a loss or damages which is covered by the Association's insurance, and which loss would otherwise be borne by the unit owner, shall be paid to such unit owner, less any deductible required by the insurance policy, and less any funds expended by the Association concerning the loss or damage. Each unit owner shall maintain the owner's unit and all fixtures and appliances in good repair at all times.

11.2 Maintenance Contracts.

A. By The Association. If there becomes available to the Association a program of cable television, termite or insect control, contract maintenance for kitchen appliances within units, or heating or air conditioning compressors or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by the Board of Directors or a majority of the voting interests present in person or by proxy and voting at a meeting of the members, or by a majority of total voting interests in writing, the Association may enter into such a contractual undertaking. The expenses of such contractual undertakings to the Association shall be a common expense and unit owners shall allow reasonable access to their units for such maintenance or contract performance. All maintenance, repairs and replacements not covered by the contract shall be the responsibility of the unit owner.

B. Decorating. Each unit owner is responsible for all decorating within the owner's unit, including wallpapering, panelling, draperies, window shades, curtains, lamps and other light fixtures, and other furnishing and interior decorating, except as restricted in subsection D, E and 12.4 hereof.

C. Alteration To Units And Common Elements By Unit Owners. No owner shall make or cause the making of any structural modifications or alterations or change of exterior appearance to the owner's unit or its appurtenant limited common elements without first obtaining the written consent of the Association, which consent shall be denied if the Board of Directors determines that the proposed modifications or alterations might adversely affect, or in any manner be detrimental to, the Condominium in part or whole. If any unit owner requests approval of an alteration or modification involving the removal of any interior partition wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. Two units owned by the same person(s) which are adjacent either horizontally or vertically may be connected by doors or stairways through common elements, walls or floors provided that approval is first obtained from the Board of Directors, and the owner obtains all necessary governmental permits and pays all expenses pertaining thereto. No owner shall cause any of the limited common elements appurtenant to the owner's unit to be enclosed or cause any changes to be made outside of the unit, including painting or other decoration, or the installation of any electrical wiring, television antennas, appliances or air conditioning units which may protrude through the walls of the Condominium or in any manner change the exterior appearance of any portion of the Condominium, without the prior written consent of the Board of Directors. Any glass, screen, curtain, blind, shutter, or awning which may be installed on any screened lanai is subject to regulation by the Board of Directors. The Board of Directors shall adopt hurricane shutter specifications including color and style. The unit owner, notwithstanding any other provisions herein, shall be responsible for the maintenance, care, insurance and preservation of any permitted modifications, installations or additions.

D. Exterior Appearance. The covering and appearance of windows and doors, whether by shutters, awnings, draperies, shades or other items visible from the exterior of the unit, is subject to the Rules and Regulations of the Association and approval of the Board of Directors.

E. Alterations. A unit owner shall not make any alterations to the owner's unit which would add to or remove any portion of the common elements nor do anything which would adversely affect the safety or soundness of any portion of the condominium property.

11.3 Common Elements. The maintenance and repair of the common elements, excluding limited common elements (other than a unit's assigned uncovered parking spaces), is the responsibility of the Association and is a common expense. No material alteration of, or substantial additions to, the common elements costing a total of more than \$5,000 in any year may be made by the Association without prior approval by a majority of those unit owners entitled to vote (see Section 2.2 of the Bylaws attached hereto as Exhibit E); except for work reasonably necessary to protect, maintain, repair or replace the common elements which also constitutes a material alteration or substantial addition.

11.4 Enforcement Of Maintenance. If the owner of a unit fails to maintain the unit or its limited common elements as required, the Association has the right to institute legal proceedings to enforce compliance, or may take any and all other steps authorized by law which are necessary to remedy such violation. The Association has a right of access to each unit during reasonable hours, when necessary, for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the common elements or damage to a unit or units. Any expenses so incurred by the Association shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of enforcement.

11.5 Negligence; Damage Caused By Condition In Unit. Each unit owner is liable for the expenses of any maintenance, repair or replacement made necessary by the owner's negligence or by that of any member of the owner's family or his guests, employees, agents, or lessees, but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the unit owner is liable only to the extent that such expense is not covered by the proceeds of insurance carried by the Association, less costs of collection of the insurance. If any condition, defect or malfunction existing within a unit, whether caused by the owner's negligence or otherwise, causes damage to the common elements or to other units, the owner of the offending unit is liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance after costs of collection. If one or more of the damaged units is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable actions to prevent the spread of the damage or make emergency repairs to prevent damage to the common elements or to another unit. The Association may, but is not obligated to, also repair the damage.

11.6 Nuisance. No member shall use or permit a unit to be used in any manner which would be annoying, unreasonably disturbing, detrimental or interferes with peaceful possession, or is a nuisance to the occupant of another unit or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with Florida law and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. All parts of the condominium property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage is allowed to accumulate or be kept in other than sanitary containers, and no fire hazard is allowed to exist.

12. USE RESTRICTIONS: The use of the units shall be in accordance with the following provisions.

12.1 Units. Each unit shall be occupied only as a residence and no business or profession shall be conducted from a unit which

is not allowed by law in that zoning district. A unit owner may, however, maintain business or professional records and handle personal or business telephone calls and correspondence from the unit as incident to the principal residence use. Owners shall notify the Association if their unit shall be vacant for more than one week, giving the Association a telephone number and address where the owner can be reached, including the date of the owner's expected return.

12.2 Occupancy Limitation. Each unit shall be occupied by only one family, its servants and guests and no more than six persons may regularly occupy any unit.

12.3 Pets. All domestic pets are allowed, but the number of such pets shall not constitute a nuisance. No pets are allowed on the common elements, except pets on a leash. No pet may be left unattended outside. The owner shall be responsible for promptly removing and properly disposing of its pets waste matter. The owner shall hold the Association harmless from any damage, liability or loss arising from having a pet on the condominium property. The keeping of a pet is a privilege, not a right, and the Board of Directors may require the removal of any pet which becomes an annoyance or nuisance to other residents and is entitled to recover from the owner any reasonable attorneys' fees incurred in enforcing or requiring the pet's removal.

12.4 Display. Nothing shall be displayed, hung or placed on the exterior of a unit without the written consent of the Board.

12.5 Parking. No boats, trainers, motor homes, travel trailers, campers, recreational vehicles, trucks or commercial vehicles shall be parked on the condominium property outside of a garage for longer than forty-eight (48) hours at any time, except for service vehicles temporarily present on business.

12.6 Common Elements. Common hallways, elevators, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. No signs are permitted unless first approved in writing by the Board of Directors. Porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging garments or other objects, for cleaning of rugs or other household items, and for storage of bicycles or other implements.

12.7 Flooring. If any unit owner, other than the Developer in constructing a unit for an owner, installs a hard surface floor covering such as (without limitation) tile or parquet, the unit owner shall first be required to obtain approval of the Board of Directors and to install a sound absorbent undercushion. If such approval is not obtained, the Board of Directors may require the surface to be covered with carpet or removed.

13. TRANSFER OF OWNERSHIP OF UNIT. In order to maintain a community of congenial, financially responsible residents and with the objective of protecting the value of the units and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a unit by an owner is subject to the following provisions so long as the condominium exists, which provisions each owner of a unit covenants to observe.

13.1 Forms Of Ownership:

A. Natural Person. A unit may be owned by one natural person or a natural person and a spouse who have qualified and been approved as elsewhere provided herein, and co-ownership of units is

also permitted. If co-ownership is to be by more than two persons who are not married to each other, the Board shall condition its approval upon occupancy only by one approved natural person as "primary occupant" and use of the unit by other persons is as if the primary occupant were the only actual owner. Any change in the primary occupant is treated as a transfer of ownership subject to all the provisions of this Section 13.

B. Ownership By Corporations 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 for other transfers of title. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as a short term transient accommodation for several individuals or families. The approval of a trustee, corporation or other entity as a unit owner is conditioned upon designation of one natural person, or husband and wife, to be the "primary occupant", and the use of the unit by other persons is as if the primary occupant and spouse were the only actual owners. Any change in the primary occupant is treated as a transfer of ownership subject to all the provisions of this Section 13. No more than one such change will be approved in any twelve-month period.

C. Life Estate. A unit may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant is deemed the only member or owner of such unit and shall be liable for all assessments and charges against the unit. Upon termination of the life estate, the holders of the remainder interest shall be separately approved by the Association.

13.2 Transfers.

A. Sale Or Gift. No unit owner other than the Developer may dispose of a unit or any interest therein by sale or gift (including agreement for deed) without the prior written approval of the Board of Directors of the Association.

B. Devise Or Inheritance. If any unit owner acquires his title by devise or inheritance, he is subject to the approval of the Board of Directors of the Association. The approval of the Association may not be denied to any devisee or heir who was the previous owner's lawful spouse or related to the owner by blood or adoption within the first degree.

C. Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, the continuance of ownership of the unit is subject to the approval of the Board of Directors of the Association under the procedures outlined in Section 13.3 below.

D. Committee Approval. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of a least three members. The Chairman of the committee shall be deemed a Vice-President, and as such is empowered to execute Certificates of Approval on behalf of the Association.

13.3 Procedures.

A. Notices To The Association.

(1) Sale Or Gift. An owner intending to make a sale or gift of the owner's unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty days prior to the date of the proposed transfer, together with the name and address of the proposed

purchaser or donee, a copy of the executed purchase agreement, and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchaser or donee and his spouse, if any, as a condition for approval. An owner acquiring title to a unit shall provide to the Association a copy of the recorded deed or other instrument evidencing title and the name and address of any mortgagee within thirty days after the transfer occurs.

(2) Devise, Inheritance Or Other Transfers. The transferee must notify the Board of the acquisition of ownership and submit to the Board a certified copy of the instrument evidencing the ownership and such other information as the Board may reasonably require. The transferee has no occupancy right unless approved by the Board, but may sell or lease the unit following the procedures provided in this Section and subject to the restrictions set forth in Section 14.

(3) Failure To Give Notice. If no notice is given, the Board, at its option, may approve or disapprove the transfer without prior notice. If it disapproves, the Board shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

B. Board Action. Within twenty days of receipt of the required notice and all information or appearances requested, whichever occurs later, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or a Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves the transfer within twenty days of receiving notice, such failure to act is deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval to the transferee.

C. Disapproval.

(1) Procedure. A proposed transfer or transferee may be disapproved only if a majority of the entire Board so votes. In exercising their power of disapproval, the Board of Directors shall act reasonably and only disapprove for reasons rationally related to the protection, preservation and proper operation of the condominium and its purposes.

(2) Disapproval. If the Board disapproves a prospective purchaser who has signed a written contract to purchase a unit and who has made at least a 10 percent down payment, then within sixty days after giving notice of such disapproval to the owner, the Board may (and shall if the disapproval is not for good cause) submit an offer by an approved purchaser to buy the unit on the same terms and conditions in the purchase agreement, unless the selling price is reasonably questioned as being bona fide, in which event the price to be offered shall be determined by taking the average price established by two qualified real estate appraisers familiar with current condominium prices in Collier County, one appraiser to be selected by the selling owner and the other selected by the Board. The cost of the appraisals shall be shared equally by the owner and the Association. Closing and transfer of the unit shall be within thirty days from submission of the agreement to purchase by the Association, or ten days after the price is determined as provided above, whichever occurs later. For purposes of this paragraph "good cause" means any good faith reason rationally related to the protection, preservation, and proper operation of the condominium and its purposes.

13.4 Exception. The provisions of Sections 13.2 and 13.3 are not applicable to the acquisition of title by an institutional

mortgagee or other approved mortgagee who acquires title through a mortgage, whether by foreclosure or deed in lieu of foreclosure.

13.5 Unapproved Transfers. Any transfer which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

14. LEASING OF UNITS: All leases of units must be in writing. No Board approval is required to lease a unit, however, a unit owner may lease only his entire unit, and then only in accordance with the following and applicable law.

14.1 Restrictions On Leasing. A unit may be leased a maximum of three times during a year. No lease, however, may be for a term of less than one month. No subleasing or assignment of lease rights by the lessee is allowed.

14.2 Occupancy During Lease Term. No one but the lessee, and the lessee's family and their guests may occupy the unit. To prevent overburdening the common elements, a unit owner whose unit is leased may not use the common elements during the lease term.

14.3 Occupancy In Absence Of Lessee. If a lessee absents himself from the unit for any period of time during the lease term, his family already in residence may continue to occupy the unit and may have house guests subject to the restrictions in Section 14.2 above. If the lessee and all the lessee's family members are absent, no other person may occupy the unit.

14.4 Regulation By Association. All of the provisions of the Condominium Documents and the Rules and Regulations of the Association pertaining to use and occupancy are applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against an owner. There is a covenant on the part of each occupant to abide by the rules and regulations of the Association and provisions of the Condominium Documents, designating the Association as the owner's agent, with the authority to terminate any lease or other occupancy agreement in the event of violations by the tenant of such covenant. A covenant that the owner and lessees are both responsible for the Association's costs and expenses, including reasonable attorneys' fees at the trial and appellate level, incurred because of any failure by the Tenant to comply with condominium restrictions is deemed to be included in every occupancy agreement, whether oral or written, even if not specifically stated in such agreement.

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

15.1 Duty And Authority To Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry by Florida condominium law and the Condominium Documents, and obtain and keep in force any or all additional insurance coverage, including Directors' and officers' liability, as it deems necessary. The name of the insured shall be the Association or, in the discretion of the Board, an insurance trustee, individually and as agent for the Association and for the unit owners without naming them, and their mortgagees.

15.2 Required Coverage. The Association shall maintain property and liability insurance covering all of the buildings and other insurable improvements within the condominium property, including common and limited common elements, and including fixtures, installations or additions located within the unfinished interior surfaces of the perimeter wall, floors, and ceilings of the individual units initially installed or replacements thereof of

like kind and quality, in accordance with the original plans and specifications of the condominium in an amount equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors. The unit owner is responsible for insuring floor, wall or ceiling coverings, and electrical fixtures, appliances, air conditioner or heating equipment, water heaters, or built-in cabinets if such equipment is located within a unit and the unit owner is required to repair or replace such equipment, if such insurance is desired. The insurance provided by the Association shall afford the following protection.

A. Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

B. Flood Insurance. In amounts deemed adequate by the Board of Directors as available through the National Flood Insurance Program.

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

D. Compensation. The Association shall maintain Workers' Compensation Insurance as required by law on at least a minimum premium basis.

E. Fidelity Bonds. The Association shall obtain and maintain adequate fidelity bonding of those individuals authorized to sign checks, and the president, secretary and treasurer of the Association. If the Association's annual gross receipts do not exceed \$100,000, the bond shall be in the principal sum of not less than \$10,000 for each such person. The Association shall bear the cost of the bonding.

15.3 Description of Coverage. A detailed summary of coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

15.4 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 unit owners, the Association, 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.

15.5 Insurance Proceeds. All 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 are payable to the Association. The Association shall receive such proceeds as are paid and hold the same in trust for the purposes stated herein and for the benefit of the unit owners and their respective mortgages 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 the share in the common elements.

B. Units. Proceeds for damage to units are held in the following undivided shares.

(1) Partial Destruction, When The Buildings Are To Be Restored. Insurance proceeds are held for the owners of damaged

OR: 2219 PG: 1470

units and their mortgagees in proportion to the costs of repairing the damage.

(2) Total Destruction Of The Buildings Or When The Buildings Are Not To Be Restored. Insurance proceeds are held for the owners of all units in the buildings and their mortgagees, each share being in proportion to the owner's share in the common elements appurtenant to the unit.

(3) Mortgagee. If a mortgagee endorsement has been issued for a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.6 Distribution Of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner.

A. Cost Of Reconstruction Or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, with remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

B. Failure To Reconstruct Or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid will not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, with remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees.

15.7 Association As Agent. The Association is hereby irrevocably appointed 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 is reconstructed or repaired is determined as follows.

16.1 Damage To Units Only, Not Common Elements. Where loss or damage occurs within a single unit or units, without damage to the common elements, the insurance proceeds, less the deductible and any repair expenses of the Association shall be distributed to the owner(s) of the damaged units, with remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees. The owners of the damaged units shall be responsible for the repair and reconstruction within the unit.

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

A. Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

B. Contract. The insurance proceeds shall be paid to the Association, and the Association shall promptly contract for the repair and restoration of the damage.

C. Insufficient Insurance. If the net proceeds of insurance and reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, upon determination of the deficiency the Association shall promptly levy a special assessment against all unit owners in proportion to their shares in the common elements. Such special assessments need not be approved by the unit owners. The special assessments shall be delivered to the Association for repair and restoration of the property.

16.3 "Very Substantial" Damage. As used in this Declaration, the term, "very substantial" damage means loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur, then:

A. Estimates. The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof.

B. Membership Decision. A membership meeting shall be called by the Board of Directors as soon as is practicable and not later than ninety (90) days after the casualty, to determine the decision of the membership with reference to rebuilding or abandonment of the condominium project, subject to the following.

(1) Insurance Sufficient. If the net insurance proceeds available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored or repaired unless the owners of two-thirds of the units vote for termination, or unless the then applicable zoning or other regulatory laws do not allow reconstruction of the same number and general types of units, in which case the condominium shall be terminated.

(2) Insurance Not Sufficient. If the net insurance proceeds available for restoration and repair are not sufficient to cover the costs thereof so that a special assessment will be required, then unless two-thirds of the owners 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 two-thirds of the unit owners vote in favor of the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate the contract for such repairs and restoration. The special assessment shall be delivered to the Association and added to the proceeds available for repair and restoration of the property.

C. Dispute. If any dispute arises as to whether "very substantial" damage has occurred, a determination by the Board of Directors is binding on all unit owners.

16.4 Application Of Construction Funds. The first monies disbursed for repair and restoration are deemed to be from the insurance proceeds; if there is a balance in the funds 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 15.6(B)(3).

16.5 Equitable Relief. If damage to the common elements renders any unit untenable and the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief or for a termination of the condominium and partition. For the purposes of this provision, it is presumed that repair, reconstruction or

rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction, and is completed within twelve (12) months thereafter.

16.6 Plans And Specifications. Any reconstruction or repairs shall be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors of the Association and by the owners of three-fourths (3/4) of the units, together with the approval of the primary institutional mortgagee.

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 is deemed a casualty to the portion taken, and the awards for that taking are 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. If any unit owner fails to deposit his award, the Association shall have a claim against the defaulting unit owner in the amount of his award, except the amount of that award is set off against any sums payable to that owner.

17.2 Determination Whether To Continue Condominium. Whether the condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement Of Funds. If the condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be condominium 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, shall be made whole, and any property damaged by the taking will be made useable 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 But Tenantable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the award 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 made in the condominium.

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

B. Distribution Of Surplus. The balance of the award, if any, is 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.

17.6 Unit Made Untenantable. If the taking is of any 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 made 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 the mortgagees.

B. Addition To Common Elements. If possible and practical, the remaining portion of the unit becomes a part of the common elements and is placed in condition for use by all unit owners in the manner approved by the Board of Directors.

C. Adjustment Of Shares In Common Elements. The shares in the common elements and common expenses appurtenant to the units that continue as part of the condominium are adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This is done by restating the shares of continuing unit owners in the common elements and common expenses as percentages of the total of the numbers representing the shares of these owners as they existed prior to the adjustment.

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 are raised by special assessment against all of the unit owners who will continue as owners of units after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes made 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 30 days after notice by either party, the value shall then be determined by appraisal as follows. The unit owner, the first mortgagee, if any, and if it so elects the Association, shall each appoint one M.A.I. real estate appraiser who is familiar with condominium values in Naples, Florida, who shall appraise the unit. The fair market value shall be computed by taking the average of their appraisals of the unit, and a judgment 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 portion of the common elements useable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagees of the unit.

17.8 Amendment Of Declaration. The changes in units under this Section 17 shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association, without the consent required of any unit owner or mortgagee.

18. TERMINATION: The condominium may be terminated in the following ways.

18.1 Agreement. The condominium may be terminated at any time by approval, in writing, of the owners of eighty percent (80%) of the units and of the Primary Institutional First Mortgagee.

18.2 Very Substantial Damage. If the condominium, as a result of common casualty, is damaged to the extent defined in Section

16.3, and it cannot be decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the unit owners are the owners as tenants in common of the property and assets of the Association. The shares of such tenants in common are the same as their shares of the common elements. The mortgagee or lienor of a unit owner has a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which it may receive by reason of such termination. The termination of the condominium is evidenced by a certificate of the Association executed by its President and Secretary certifying the facts causing the termination, which certificate becomes effective upon recordation in the Public Records of Collier County, Florida.

18.4 New Condominium. The termination of a condominium does not bar creation of another condominium affecting all or any portion of the same property.

18.5 Partition; Sale. Following termination, the condominium property may be partitioned and sold upon the application of any unit owner. If following a termination, the owners of seventy-five percent (75%) of the units determine to accept an offer for the sale of the condominium property, each owner is bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the condominium property is held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The members of the last Board of Directors continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association. After the affairs of the Association are wound up, the Association shall be dissolved.

18.7 Provisions Shall Survive. The provisions of this Section 18 shall be deemed covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

19. OBLIGATION OF OWNERS:

19.1 Actions. Each unit owner, the owner's tenants and guests, and the Association is governed by and shall comply with the provisions of Florida laws, the Declaration, the Association's Articles of Incorporation, its By-Laws, and its Rules and Regulations. Section 718.1255 of the Florida Statutes contains provisions for mandatory nonbinding arbitration of certain condominium disputes that do not involve title, the interpretation or enforcement of a warranty, the levy of a fee or assessment, or the collection of an assessment. Otherwise, actions for damages or for injunctive relief, or both, for failure to comply with condominium requirements may be brought by the Association or by a unit owner against: the Association; a unit owner; anyone who occupies a unit; or any member of the Board of Directors who willfully and knowingly fails to comply with these provisions. The Association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the Declaration, the Association By-Laws, or reasonable rules of the Association. No fine will become a lien against a unit. No fine may exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the unit owner.

and, if applicable, its licensee or invitee. The hearing must be held before a committee of other unit owners. If the committee does not agree with the fine, the fine may not be levied. The provisions of this section do not apply to unoccupied units.

19.2 Waiver. A provision of the Florida condominium laws 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 members of the Board of Directors may waive notice of specific meetings in writing as provided by the By-Laws. Any instrument given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent, even if such instruction and the payment of funds thereunder might constitute a waiver of any provision of the Florida 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 Florida condominium law or the Condominium Documents, as they may be amended from time to time, the prevailing party is entitled to recover the costs of the proceeding and such reasonable attorney's fees, including for any appeal, as may be awarded by the court.

19.4 No Waiver. The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents does not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future.

19.5 No Election Of Remedies. All rights, remedies and privileges granted to the Association or unit owners, pursuant to any terms, provisions, covenants or conditions of the condominium documents are cumulative, and the exercise of any one or more is not 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. Prior written approval of the record holder of a first mortgage lien on a unit in the condominium is required for any amendment to the Declaration which would decrease the percentage interest of the unit in the ownership of the condominium, except as provided in Sections 17.6(C) and 17.8.

20.2 Notice. In the event of condemnation, eminent domain proceedings, very substantial damage to or destruction of any unit or any part of the common elements, the record holder of any first mortgage on the unit is entitled to notice of any termination of the condominium.

20.3 Redemption. If proceedings are instituted to foreclose any mortgage 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 rights of action, or the Association may purchase the unit at the foreclosure sale. A mortgagee shall have 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.

20.4 Right To Inspect Books. Upon request, the Association shall make available to institutional mortgagees current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean 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.

20.5 Lender's Notices. Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:

A. Any delinquency of sixty 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 a specified percentage of mortgagees.

21. DEVELOPER'S RIGHTS AND DUTIES: So long as the Developer or any successor in interest to the Developer holds 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, nor their use of the condominium property shall unreasonably interfere with the completion of the contemplated improvements or sale of units. The Developer may make such use of the unsold units and the common elements as may reasonably facilitate completion and sale, including, but not limited to, maintenance of a sales office, display of signs, showing of units for sale to prospective purchasers, and leasing units for sale to prospective purchasers.

21.2 Assignment. All or any portion of the rights, privileges, powers and immunities granted or reserved to the Developer in the Condominium Documents may be assigned by the Developer to any person or entity, without the consent of any other unit owner or any holder of a mortgage secured by a unit (other than the holder of a first mortgage secured by an interest of the Developer in the Condominium). In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first thereby acquiring title to such interest succeeds to all rights, powers, privileges and immunities of the Developer in and to such interest.

21.3 Amendment Of Plans And Alteration of Boundaries and Apartment Dimensions. Developer reserves the right to change the interior design and arrangement of all units, or the boundaries between units so long as Developer owns the units so changed. No such changes shall be made without amendment of the condominium documents to reflect the changes. Any such amendment requires approval by a majority of voting interests.

21.4 Amendments By Developer. To the extent permitted by law, as long as the Developer owns units for sale in the ordinary course of business, the Developer reserves the right to amend this Declaration and its exhibits for any lawful purposes, including the following purposes: to conform to the requirements of any institutional mortgagee or governmental agency willing to make, purchase or insure mortgage loans secured by units; to conform this Declaration to the requirements of any valid statute, rule or regulation affecting the subject matter hereof; or for the purposes set forth and pursuant to the provisions of Florida Statutes, Sections 718.104(4)(e) and 718.110(5).

21.5 Requirements Of Amendment. Said amendments by Developer set forth in Sections 21.3 and 21.4 hereof require the approval of

OR: 2270 PG: 1477

a majority of voting interests and must be recorded in the Public Records of Collier County, Florida. Such amendments shall not increase the number of condominium units nor alter the boundaries of the common elements beyond the extent permitted in Section 21.3 hereof, nor shall such amendment adversely affect the lien or priority of any institutional first mortgage recorded prior to the amendment. No amendment may change any unit's share in the common elements and other appurtenances, nor increase the owner's proportional share of the common expenses unless the owner of the unit concerned and all of such mortgagees as previously recited join in the execution of the amendment.

21.6 Sales Or Leases Of Units. The Developer has the right to sell, lease or transfer any unit owned by it on such terms and conditions as it deems in its own best interests.

21.7 Turnover. The Developer may turn over control of the Association to unit owners other than the Developer prior to the statutory date in its sole discretion by causing all of its appointed Directors to resign, whereupon it is the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days notice of Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, is liable in connection with such resignations even if unit owners other than the Developer refuse or fail to assume control.

22. AMENDMENT OF DECLARATION: Amendments to this Declaration may be proposed and adopted as follows.

22.1 Proposal. Except as otherwise provided herein or under applicable law, amendments to this Declaration shall be proposed by a majority of the Board or upon written petition of one-quarter (1/4) of the unit owners by an instrument in writing signed by them.

22.2 Vote. Upon any amendment or amendments to this Declaration being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

22.3 Requirements. Except as otherwise provided by law, or by specific provision of the Condominium Documents, this Declaration may be amended by concurrence of two-thirds (2/3) of the voting interests present and voting at any annual or special meeting provided that notice of any proposed amendment has been given to all the members in accordance with law. Amendments may be adopted without a meeting following the procedures set forth in the By-Laws.

22.4 Recordation. A copy of each amendment shall be attached to a certification that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers 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 Collier County, Florida.

22.5 Restrictions On Amendment. No amendment may change the configuration or size of any unit in any 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, unless the record owner of the unit and the owner's institutional mortgagee, if any, consents in writing to the amendment. This proviso does not apply to changes caused by condemnation or taking by eminent domain.

22.6 Enlargement Of Common Elements. The common elements designated by the Declaration may be enlarged to add real property acquired by the Association through amendment of this Declaration. The amendment shall describe the interest in the property and shall submit the property to the terms of the Declaration. The amendment shall be approved by at least two-thirds (2/3) of the voting interests. The amendment divests the Association of title and vests title in the unit owners in the same proportion as the undivided shares in the common elements that are appurtenant to the units. Such an amendment shall not be deemed to make any material change in the appurtenances to the unit.

22.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association or a unit owner may petition the Collier County Circuit Court to correct an error or omission in the Declaration or any other documents required to establish the condominium, affecting its valid existence, which errors or omissions are not correctable by the amendment procedures in the Declaration or Florida condominium law. In any case, after three (3) years from the filing of the Declaration, the Declaration of Condominium shall be deemed to be effective under the Florida condominium law in creating a condominium even if it does not substantially comply with the mandatory requirements of the Condominium Act.

22.8 Amendment Of Provisions Relating To Developer. As long as the Developer holds any unit in the Condominium for sale in the ordinary course of business, no amendment is effective to change any provision relating specifically to the Developer without the Developer's written consent.

23. MISCELLANEOUS:

23.1 Severability. The invalidity in whole or in part of any provision of this Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations of the Association, and any exhibit attached hereto, does not affect the remaining portions thereof.

23.2 Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits is governed by Florida law.

23.3 Conflicts. In the event of a conflict between any provision of this Declaration and current Florida condominium law, the Florida condominium laws control. In the event of a conflict between this Declaration and the Association's Articles of Incorporation or By-Laws, the Declaration controls.

23.4 Interpretation. The Board of Directors of the Association is responsible for interpreting the provisions of this Declaration and of any of the exhibits attached hereto. Such interpretation is binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable establishes the validity of such interpretation unless a court rules otherwise.

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

OR: 2279 PG: 14/9

IN WITNESS WHEREOF, the Developer, Sunset 12, Inc., a Florida corporation, has caused this execution of this Declaration of Condominium this 3rd day of February, 1997.

Signed in the presence of:

Mark K. Kennedy
Witness #1

Mark K. Kennedy
print name

Catherine E. Dabbier
Witness #2

Catherine E. Dabbier
print name

SUNSET 12, INC.,
a Florida corporation

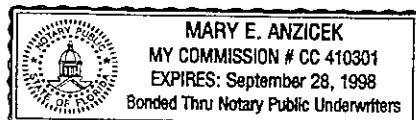
By: Philip M. Brabyn
Philip M. Brabyn, President

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared PHILIP M. BRABYN, President of Sunset 12, Inc., a Florida corporation, on behalf of the corporation for the purposes therein expressed, who is either personally known to me or driver's license and who executed the foregoing instrument and he acknowledged to and before me that he executed the same.

Witness my hand and official seal this 3rd day of February, 1997.

Mary E. Anzicek
NOTARY PUBLIC (S E A L)
My Commission Expires:



CONSENT OF MORTGAGEE

NationsBank, N.A. (South), a national banking association, (the "Mortgagee"), as owner and holder of a mortgage from Sunset 12, Inc., a Florida corporation, recorded in O.R. Book 2138, Pages 943 et seq., of the Public Records of Collier County, Florida, encumbering the lands therein described, hereby consents to that certain Declaration of Condominium and all exhibits attached thereto recorded in O.R. Book 2279, Pages 1448 et seq., of the Public Records of Collier County, Florida, and agrees that the interest in said lands shall be subject to said Declaration.

By the execution of this instrument, the Mortgagee makes no warranty or representation of any kind concerning the Declaration and amendments thereto, any of its terms and provisions, or the legal sufficiency thereof; and does not assume, and shall not be responsible, for any of the obligations or liabilities of the Declarant contained in the Declaration, or any other documents issued in connection with the promotion of Berkshire Landings.

The consent shall not impair the rights and remedies of the Mortgagee set forth in the Mortgage or in the Declaration.

Malinda A. Laube
Witness
Print Name MALINDA A. LAUBE
Colleen McCabe
Witness
Print Name Colleen McCabe
STATE OF FLORIDA
COUNTY OF Lee

NationsBank, N.A. (South),
a national banking association
By: Roberts K. Byrne
Roberts K. Byrne, Vice Pres.

(Corporate Seal)

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared ROBERTS K. BYRNE, the Vice President of NationsBank, N.A. (South), a national banking association, on behalf of NationsBank and for the purposes therein expressed. He is (personally known to me) or produced _____ as identification.

Witness my hand and official seal this 30th day of January, 1997.

My Commission Expires:

Malinda A. Laube
NOTARY PUBLIC (S E A L)
Malinda A. Laube
print name
Commission # CC432393

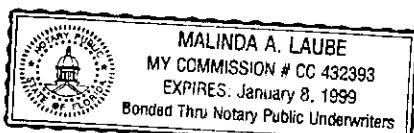


EXHIBIT "A" page 1 of 2

THE COLONIES AT BERKSHIRE LAKES
(SECOND 4-ACRE PARCEL)

LEGAL DESCRIPTION

Commence at the Northeast Corner of Tract "B", Berkshire Lakes Unit Three as recorded in Plat Book 16, Pages 15 - 17 of the Public Records of Collier County, Florida and run North 58°33'00" West for 7.23 feet to a point of curvature of a curve concaved Southwesterly; thence run 177.19 feet along the arc of said curve having a Radius of 916.00 feet, a central angle of 11°05'00", a chord of 176.92 feet and a chord bearing of North 84°27'30" West to a point of tangency; thence run North 70°00'00" West for 238.85 feet to the POINT OF BEGINNING of the parcel of land hereinafter described: thence continue North 70°00'00" West for 168.00 feet; thence run South 20°00'00" West for 415.14 feet; thence run South 65°00'00" East for 172.59 feet; thence run North 68°28'27" East for 170.31 feet; thence run South 75°29'45" East for 228.82 feet; thence run North 14°30'14" East for 56.51 feet; thence run South 75°29'46" East for 18.06 feet; thence run North 14°30'15" East for 120.26 feet; thence run North 22°51'01" West for 112.42 feet to a point of non-tangential intersection with a curve concaved Southwesterly; thence run 48.97 feet along the arc of said curve having a Radius of 882.00 feet, a central angle of 3°03'05", a chord of 48.97 feet and a chord bearing of North 68°28'28" West to a point of tangency; thence run North 70°00'00" West for 120.31 feet to a point of curvature of a curve concaved Southwesterly; thence run 19.18 feet along the arc of said curve having a radius of 83.00 feet, a central angle of 13°14'38", a chord of 19.14 feet and a chord bearing of North 78°37'18" West to a point of tangency; thence run North 83°14'38" West for 44.23 feet; thence run North 70°00'00" West for 56.47 feet; thence run North 20°00'00" East for 46.34 feet to the POINT OF BEGINNING.

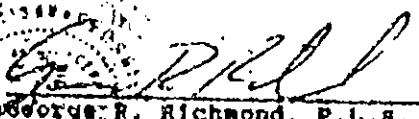
Containing 4.00 Acres more or less.

EXHIBIT "A" page 2 of 2

LEGAL DESCRIPTION
THE COLONIES AT BERKSHIRE LAKES
PHASE II

COMMENCE at the Northeast corner of Tract "B" of the plat thereof BERKSHIRE LAKES UNIT THREE as recorded in Plat Book 16, Pages 15 through 17 of the Public Records of Collier County, Florida; thence along a curve to the left having a radius of 916.00 feet, a central angle of 09 18'28", an arc length of 148.81 feet, and a chord which bears N65 20'46"W to its point of tangency; thence N70 09'00"W a distance of 236.85 feet to a point for corner; thence S20 00'00"W a distance of 45.34 feet to a point for corner; thence S70 00'00"E a distance of 56.47 feet; thence S83 14'38"E a distance of 48.23 feet to a point of curve; thence along a curve to the right having a radius of 83.00 feet, a central angle of 13 14'38", an arc length of 19.19 feet, and a chord which bears S76 37'17"E to its point of tangency; thence S70 00'00"E a distance of 120.31 feet to a point of curve; thence along a curve to the right having a radius of 882.00 feet, a central angle of 03 03'05", an arc length of 46.97 feet, and a chord which bears S68 28'27"E to a non-tangential line; thence S22 51'01"E a distance of 112.42 feet; thence S14 30'15"W a distance of 120.26 feet; thence S75 29'46"W a distance of 18.06 feet; thence S14 30'14"W a distance of 735.31 feet; thence N73 29'45"W a distance of 97.86 feet; thence S68 28'27"E a distance of 203.18 feet; thence N65 00'00"W a distance of 193.40 feet; thence N29 41'51"E a distance of 284.48 feet; thence N19 27'30"W a distance of 73.84 feet; thence N20 00'00"E a distance of 86.13 feet; thence S70 00'00"E a distance of 80.00 to the POINT OF BEGINNING.

Prepared by:


George R. Richmond, P.L.S. 2406
Gillide C. McAnly & Associates, P.A.
Bigfoot Tourism Trail, Suite 202
Naples, Florida 33962
Date: 1/13/82

Bean, Whitaker, Lutz & Barnes, Inc.

CONSULTING ENGINEERS AND SURVEYORS

13141-8 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919
(941) 481-1331
FAX (941) 481-1073

N

Surveyor's Certification
for
Units 101, 102, 103, 201, 202 and 203 Only,
Berkshire Landings, A Condominium

I, William E. Bean, Registered Florida Surveyor and Mapper, hereby certify that the construction of the improvements of Units 101, 102, 103, 201, 202 and 203 Only, Berkshire Landings, A Condominium, as indicated on the attached Exhibits "B & C" dated 1/30/97 is substantially complete so that these materials, together with the provisions of the Declaration of Condominium describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements, limited common elements and of each unit can be determined from these materials and that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common element facilities serving the building in which the units to be conveyed are located have been substantially completed.

Bean, Whitaker, Lutz & Barnes, Inc.



William E. Bean, P.S.M. 3261WEB/AJ
W43-CERT2

January 30, 1997

30126

BERKSHIRE LANDINGS, A CONDOMINIUM

EXHIBIT "B" & "C"

CONDOMINIUM PLAT BOOK PAGE
SHEET 1 OF 3

LYING IN SECTION 32, TOWNSHIP 49 SOUTH, RANGE 26 EAST,
COLLIER COUNTY, FLORIDA.

SURVEY BASED ON BERKSHIRE LANDINGS AS RECORDED IN PLAT BOOK 26 AT PAGE 3.
PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
UNWARRANTED LANDS, IF ANY, WERE NOT LOCATED.

THIS PLAT, PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINQUENT THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY. THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA, BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

BEARINGS ARE BASED ON THE CENTERLINE OF BELVILLE BOULEVARD AS BEING
NORTH 70°00' WEST.

ALL UNIT BOUNDARY DIMENSIONS REPRESENT DIMENSIONS TO EXISTING WALLS.

DATE OF LAST FIELD WORK: 1/28/97
PARCEL CONTAINS 101 ACRES MORE OR LESS

DESCRIPTION:

BERKSHIRE LANDINGS AS RECORDED IN PLAT BOOK
26 AT PAGE 3, OF THE PUBLIC RECORD OF LEE
COUNTY, FLORIDA

 = CONCRETE POWER POLE
 = WOOD POWER POLE
 = WATER METER
 = ELECTRIC SERVICE
 = CABLE TV. RISER
 = UNITED TELEPHONE RISER
 = WATER VALVE
 = WATER BLOWOFF VALVE
 = FIRE HYDRANT
 = CATCH BASIN
 = LAMP POST

OR: 2219 PG: 1486

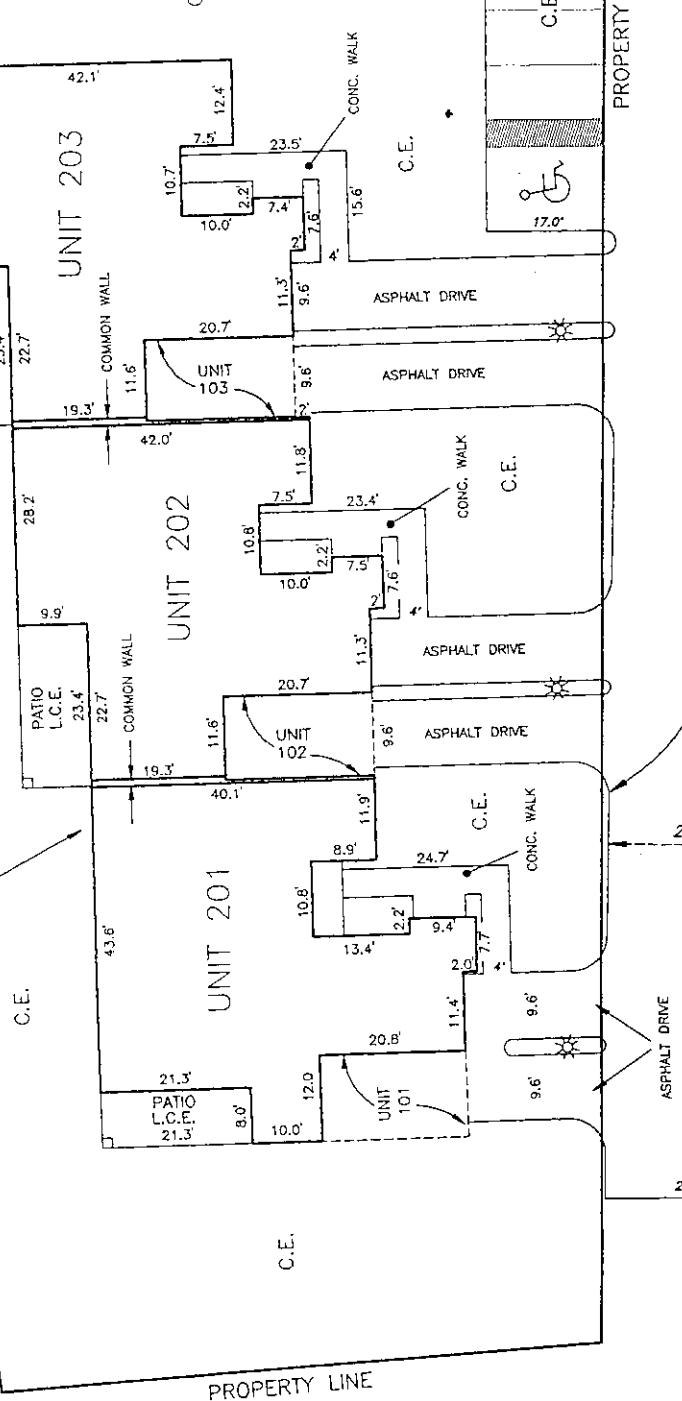
EXHIBIT "B" & "C"

BERKSHIRE LANDINGS, A CONDOMINIUM

LYING IN
SECTION 32, TOWNSHIP 49 SOUTH, RANGE 26 EAST,
COLLIER COUNTY, FLORIDA.

(2) STORY MASONRY BUILDING

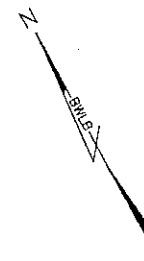
PROPERTY LINE



CONDOMINIUM PLAT BOOK, PAGE

SHEET 3 OF 3

THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER, LUTZ & BARNES, INC.
CONSULTING ENGINEERS AND SURVEYORS
15141-8 MCGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919
(411) 481-1331



GRAPHIC SCALE 100' = 20'



UNIT ELEVATIONS:

CEILING (VAULTED)	+35.5'
SECOND FLOOR	+22.5'
CEILING	+21.6'

FIRST FLOOR	+12.6'
GARAGE FLOOR	+12.0'

UNIT BOUNDARIES BUILDING "A"
SECOND FLOOR (INCLUDES GARAGE & STAIRS ON FIRST FLOOR)

Bean, Whitaker, Lutz & Barnes, Inc.
CONSULTING ENGINEERS AND SURVEYORS
15141-8 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919 (411) 481-1331

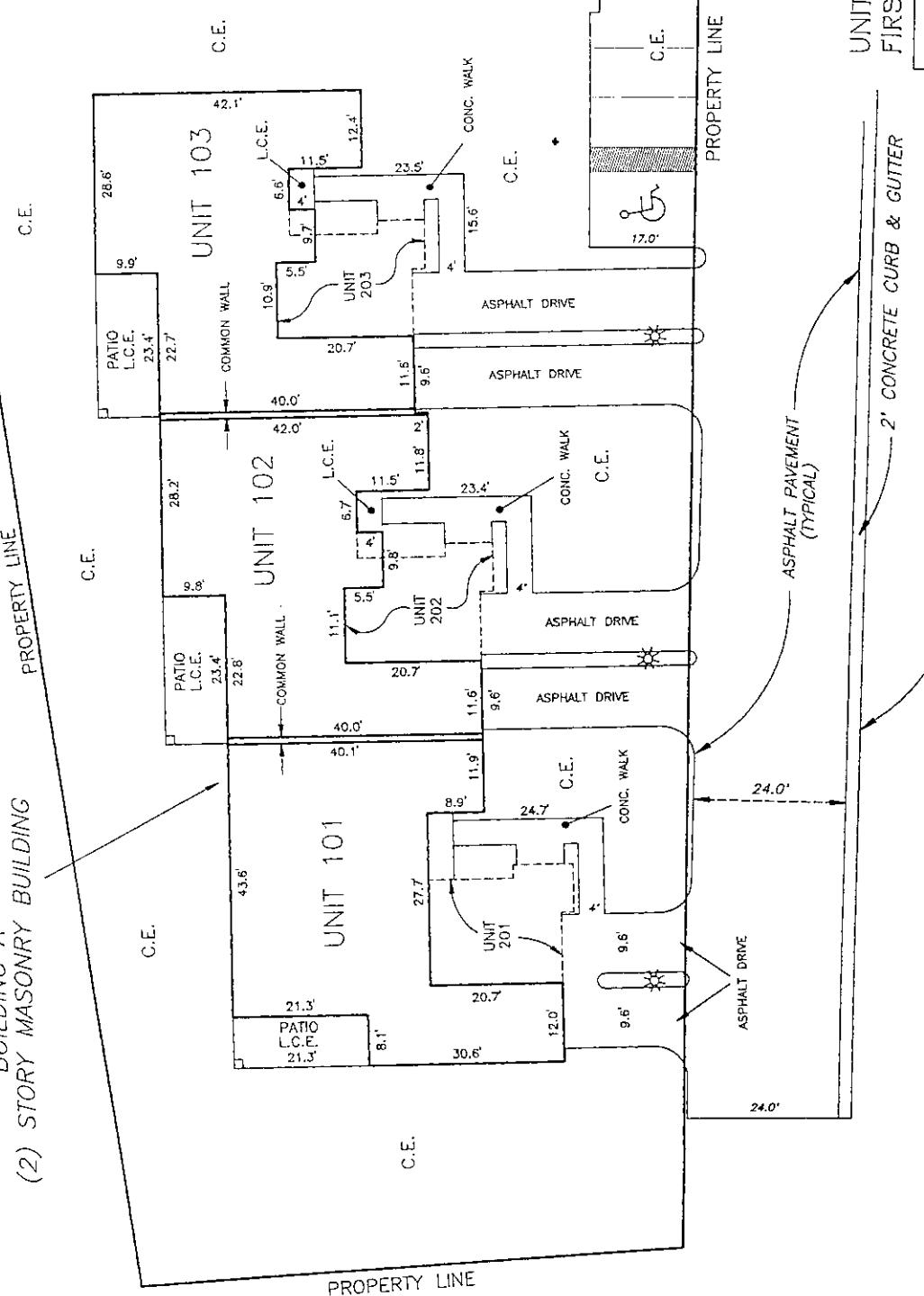
30126C	DWG	PROJECT NO.	DRAWN BY	SCALE	FILE NO. (S-T-R)
1/30/97	30126	SAM		1" = 20'	3 OF 3

EXHIBIT "B" & "C"

BERKSHIRE LANDINGS. A CONDOMINIUM

SECTION 32, TOWNSHIP 49 SOUTH, RANGE 26 EAST,
COLLIER COUNTY, FLORIDA.

(2) STORY MASONRY BUILDING



CONDOMINIUM PLAT BOOK _____, PAGE _____
SHEET 2 OF 3
THIS INSTRUMENT PREPARED BY:
BEAN, WHITAKER, LUTZ & BARNES INC.
CONSULTING ENGINEERS AND SURVEYORS
13141-B WOODCROSS BOULEVARD
PORT MYERS, FLORIDA 33980
(344) 481-1331

**UNIT BOUNDARY DEFINITIONS:
(TAKEN FROM CONDOMINIUM DECLARATION)**

5.3 UNIT BOUNDARIES. EACH UNIT INCLUDES ITS GARAGE AND THAT PART OF THE BUILDING THAT LIES WITHIN THE FOLLOWING BOUNDARIES:

A. UPPER AND LOWER BOUNDARIES. THE UPPER AND LOWER BOUNDARIES OF THE UNIT ARE THE FOLLOWING BOUNDARIES EXTENDED TO THEIR PLANAR INTERSECTIONS WITH THE PERIMETRICAL BOUNDARIES.

(1) UPPER BOUNDARIES, IN ALL UNITS, THE UPPER BOUNDARY IS THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE CEILING.

(2) LOWER BOUNDARIES, LOWER BOUNDARIES CONSIST OF THE HORIZONTAL PLANE OF THE UNFINISHED UPPER SURFACE OF THE CEILING.

B. PERIMETRICAL BOUNDARIES. THE PERIMETRICAL BOUNDARIES OF THE UNIT ARE THE VERTICAL PLANES OF THE UNFINISHED EXTERIOR SURFACES OF THE WALLS BOUNDING THE UNIT INCLUDING ITS GARAGE, EXTENDED TO THEIR PLANAR INTERSECTIONS WITH EACH OTHER AND CONCRETE FLOOR OF THE UNIT.

C. APERTURES, WHERE THERE ARE APERTURES IN ANY BOUNDARY, INCLUDING BUT NOT LIMITED TO WINDOWS OR DOORS, SUCH BOUNDARIES EXTEND TO THE INTERIOR OR UNFINISHED SURFACES OF SUCH APERTURES, AND ALL FRAMEWORKS THEREOF, WITH THE UPPER AND LOWER BOUNDARIES.

D. EXCLUSIONS. A UNIT DOES NOT INCLUDE INTERIOR BEARING WALLS OR PARTITIONS AND DOES NOT INCLUDE PIPES, DUCTS, WIRES, CONDUITS AND OTHER UTILITIES RUNNING THROUGH ANY INTERIOR WALL OR PARTITION FOR FURNISHING OF UTILITY SERVICES TO OTHER UNITS OR TO THE COMMON ELEMENTS.

7
SILB

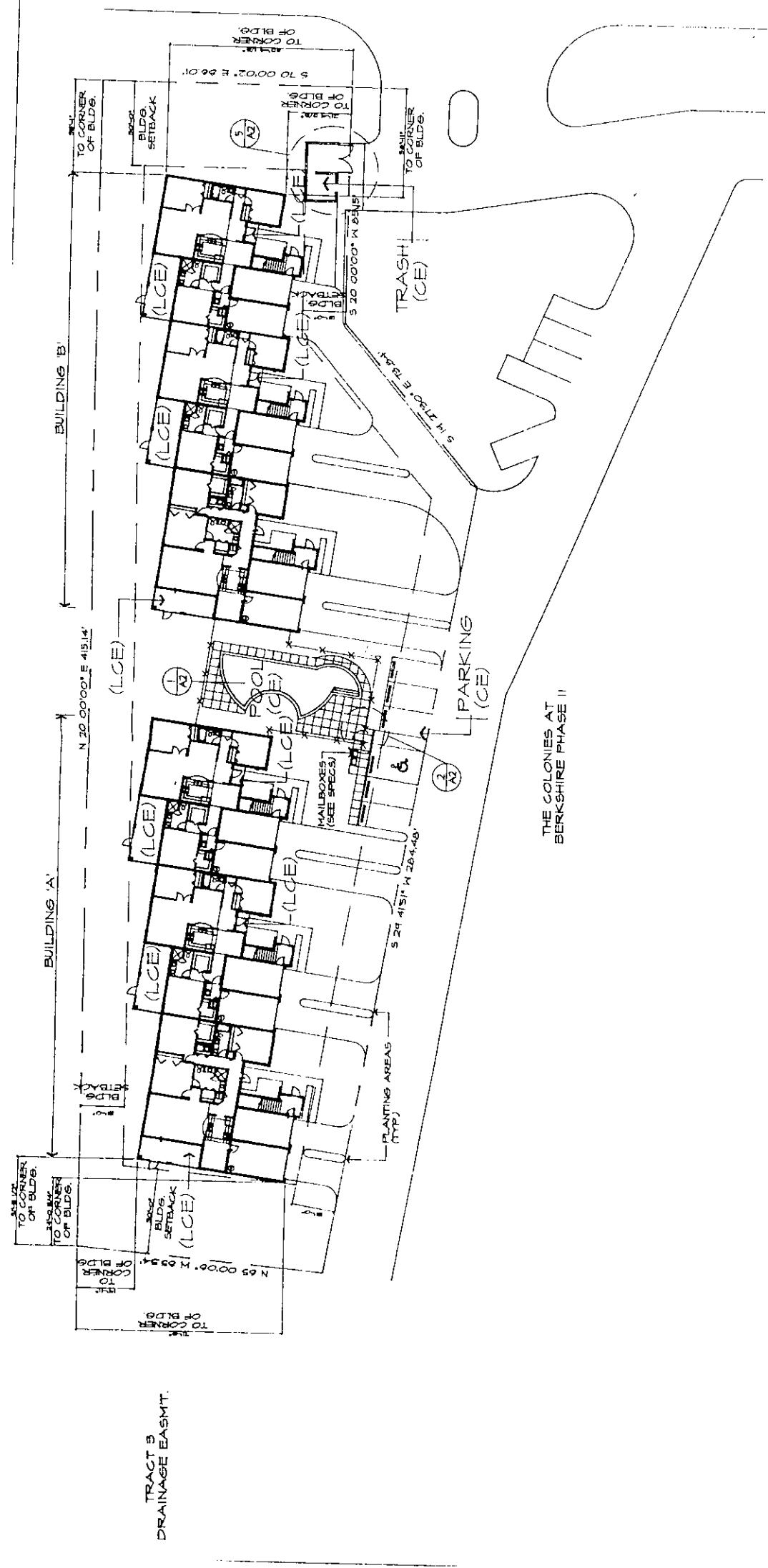
GRAPHIC SCALE 1" = 20'

BOUNDARIES BUILDING "A"
ECCOB

Bean, Whitaker, Lutz & Barnes, Inc.
CONSULTING ENGINEERS AND SURVEYORS

13141-8 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919 (94) 481-1331

DATE	PRODUCT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1/30/97	30126	SAM	1" = 20'	2 OF 3	32-49-26



SÍNTESIS

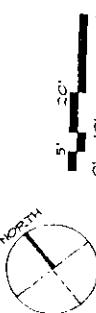
BERKSHIRE LAND

(LCE) LIMITED COMMON ELEMENT
(CE) COMMON ELEMENT

1. THE HEIGHT OF BUILDING A-4 SHALL BE 27'-11" ABOVE GRADE
2. ALL IMPROVEMENTS ARE PROPOSED
3. IMPROVEMENTS NOT SUBSTANTIALLY COMPLETE
4. PARKING SUMMARY.

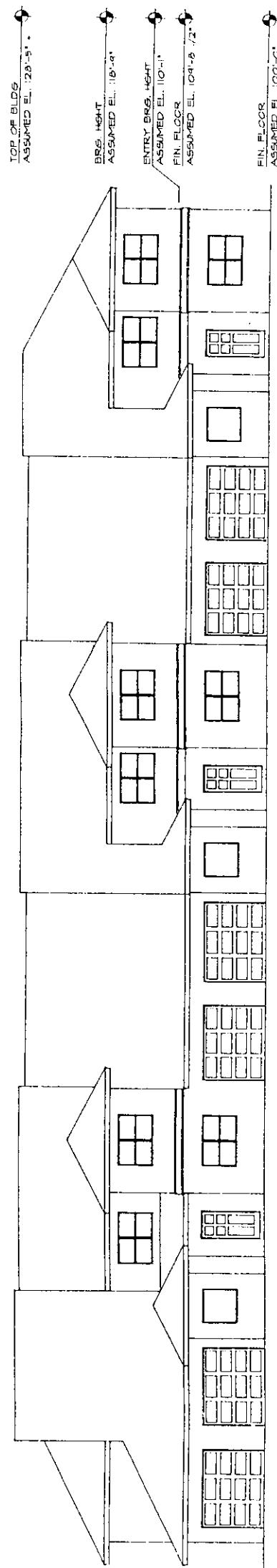
BERKSHIRE LANDINGS

PLOT PLAN MAY 3, 1945
15 PUBLIC, INCLUDES DRIVEWAYS
1 HANDICAP
26 TOTAL



PREPARED BY:
WARNER / BERGEN ASSOCIATES

OR: 2279 PG: 1489



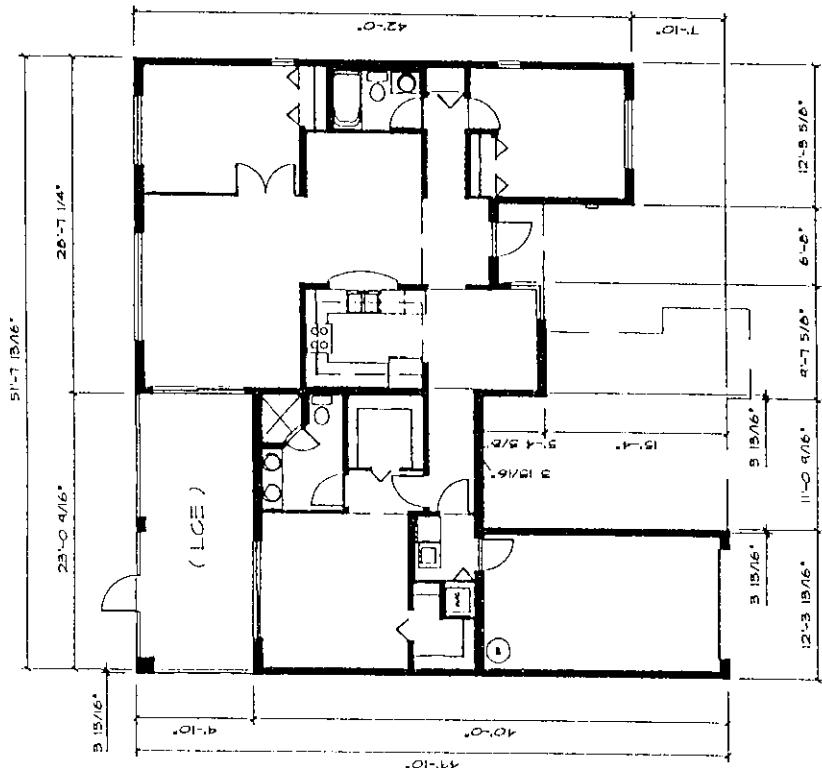
ALL IMPROVEMENTS ARE PROPOSED
BERKSHIRE - ANDINGS

SECOND FLOOR BUILDING B



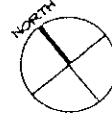
PREPARED BY
WARNER / PERREY & CO. ARCHITECTS.

60016

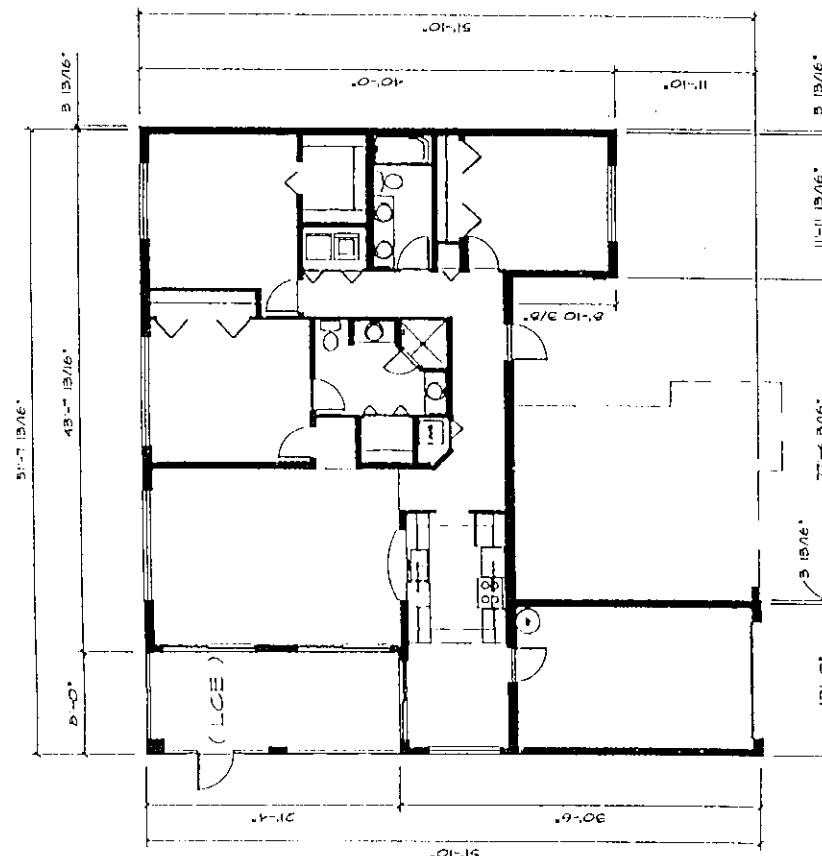


(LCE) LIMITED COMMON ELEMENT
(CE) COMMON ELEMENT
ALL IMPROVEMENTS ARE PROPOSED

BERKSHIRE LANDINGS UNIT 103 AND 106 TYPE 'C' UNIT PLAN



UNIT	SQUARE FOOTAGE
AIR CONDITIONED	1,426.38 SQ. FT.
SHED	245.51 SQ. FT.
SCREENED LANAI	229.75 SQ. FT.
TOTAL	<u>1,961.64</u> SQ. FT.



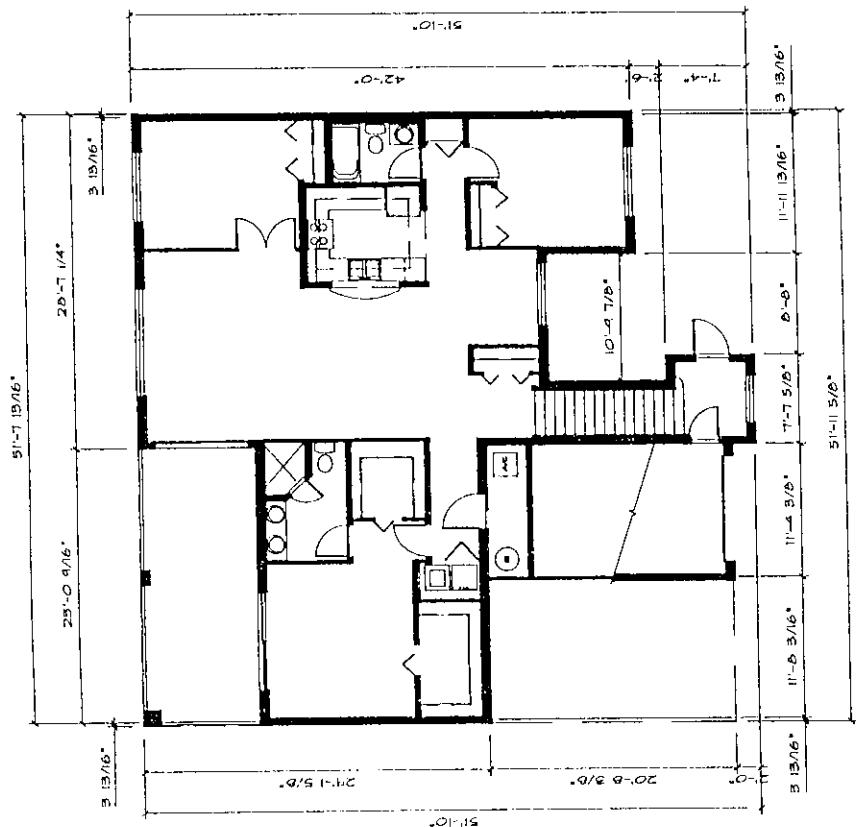
- (LC) LIMITED COMMON ELEMENT
- (CE) COMMON ELEMENT
- ALL IMPROVEMENTS ARE PROPOSED

BERKSHIRE LANDINES



UNIT SQUARE FOOTAGE	
AIR CONDITIONED	1,534.56 SQ. FT.
SARAGE	252.14 SQ. FT.
SCREENED LANAI	70.67 SQ. FT.
TOTAL	1,857.44 SQ. FT.

202000



(LCE) LIMITED COMMON ELEMENT
(CE) COMMON ELEMENT
ALL IMPROVEMENTS ARE PROPOSED

BERKSHIRE LANDINGS
UNIT 2C2 AND 205
TYPE E UNIT PLAN

UNIT SQUARE FOOTAGE	
AIR CONDITIONED	1,664.36 SQ. FT.
GARAGE	238.83 SQ. FT.
SCREENED LANAI	229.75 SQ. FT.
TOTAL	2,132.96 SQ. FT.



(LCE) LIMITED COMMON ELEMENT
(CE) COMMON ELEMENT
ALL IMPROVEMENTS ARE PROPOSED

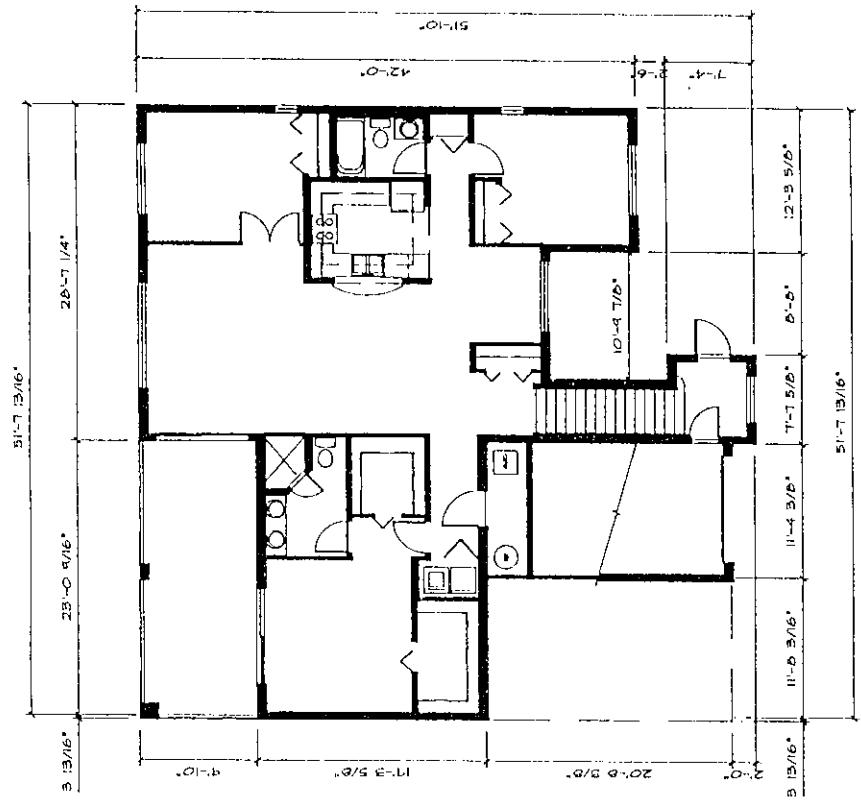
BERKSHIRE LANDINGS
UNIT 102 AND 105
TYPE B UNIT PLAN

UNIT SQUARE FOOTAGE	
AIR CONDITIONED	1,473.16 SQ. FT.
GARAGE	245.57 SQ. FT.
SCREENED LANAI	229.75 SQ. FT.
TOTAL	1,948.44 SQ. FT.



PREPARED BY:
CLARKSON / PERRENROUD ARCHITECTS

፩፻፲፭

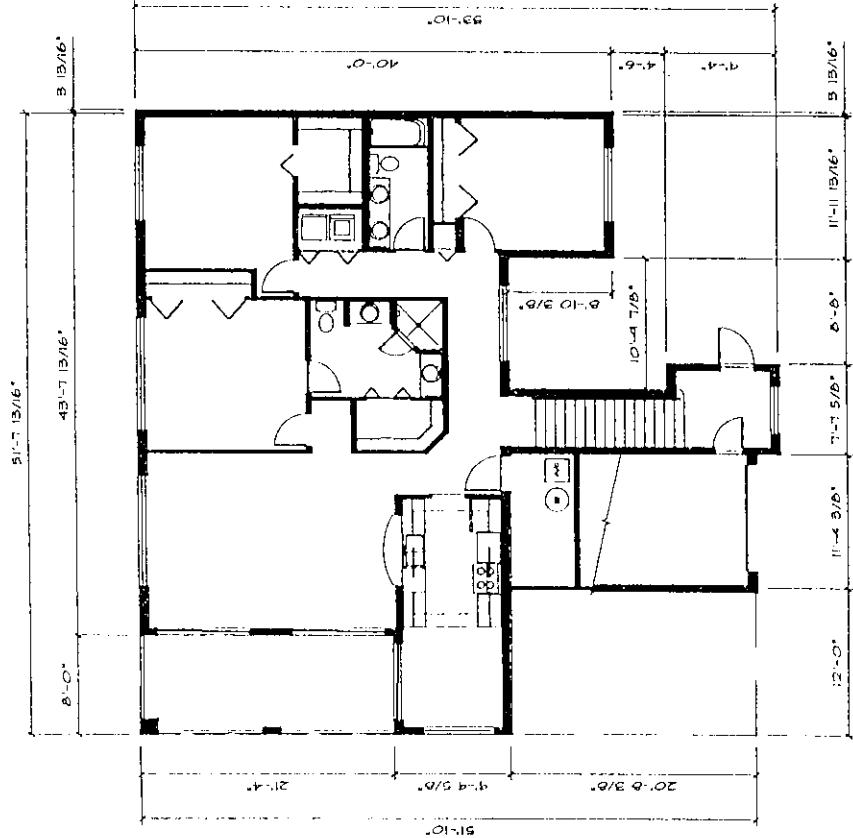


(LCE) LIMITED COMMON ELEMENT
(CE) COMMON ELEMENT
ALL IMPROVEMENTS ARE PROPOSED

**BERKSHIRE LANDINGS
UNIT 203 AND 206
TYPE F UNIT PLAN**



UNIT SQUARE FOOTAGE	
AIR CONDITIONED	1,677.00 SQ. FT.
GARAGE	238.83 SQ. FT.
SCREENED LANAI	229.75 SQ. FT.
TOTAL	<u>2,146.46</u> SQ. FT.



BERKSHIRE LAND

UNIT 201 AND 204 TYPE 'D' UNIT PLAN



UNIT	SQUARE FOOTAGE
AIR CONDITIONED	1,754.55 SQ. FT.
GARAGE	235.83 SQ. FT.
SCREENED LANAI	170.67 SQ. FT.
TOTAL	2,161.05 SQ. FT.

בְּרוּלָה שָׂעָרֶבֶת (84. RIGHT-OFF-WAY)

1. **DESCRIPTION
(VACANT)**

TRACT 3
IRRIAGAGE EASEMENT

CERTIFICATE

new phenomena is only for the lands as
described above. A separation of time, causes a
separation of phenomena.

卷之三

BOUNDARY SURVEY
4 E-155

DATE OF SURVEY AUGUST 11, 1994

6

卷之三

14009 1443-1551-2

EXHIBIT C

OR: 2279 PG: 1493

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on January 27, 1997, as shown by the records of this office.

The document number of this corporation is N97000000440.

OR: 2279 PG: 1494

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-eighth day of January, 1997



CR2EO22 (2-95)

Sandra B. Northam
Secretary of State

2144953 OR: 2279 PG: 1448
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
02/04/97 at 09:34 AM DWIGHT E. BROCK, CLERK

RESOLUTION OF THE BOARD OF DIRECTORS OF
BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.
FOR AMENDMENTS TO DECLARATION OF COMDOMINIUM

CERTIFICATION

We, Genevieve Scandiffio, President of Berkshire Landings Condominium Association, Inc. and Susan Kuehne, Secretary of Berkshire Landings Condominium Association, Inc. a Florida not-for-profit corporation, hereby certify that a Special Mailing to the members was sent March 24, 2009 for approval to amend the current Declaration of Condominium. A quorum of at least 2/3 (two-thirds) of members voted in favor of the proposed changes (attached).

INSTR 4313557 OR 4466 PG 2777
RECORDED 6/30/2009 12:07 PM PAGES 7
DWIGHT E. BROCK
COLLIER COUNTY CLERK OF THE CIRCUIT COURT
REC \$61.00

BERKSHIRE LANDINGS CONDOMINIUM
ASSOCIATION, INC.

By: Genevieve Scandiffio
Genevieve Scandiffio, President

BERKSHIRE LANDINGS CONDOMINIUM
ASSOCIATION, INC.

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgements in the State and County last aforesaid, this day personally appeared GENEVIEVE SCANDIFFIO, the President of Berkshire Landings Condominium Association, Inc., a not-for-profit corporation, to me known to be the persons described in and who executed the foregoing instrument and she acknowledged to and before me that she executed the same on behalf of said corporation for the purposes therein expressed.

Witness my hand and official seal this 29th day of June, 2009.

Gwen G. Holcomb
NOTARY PUBLIC (SEAL)

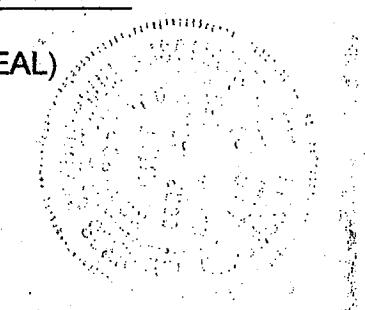
My Commission Expires:



By: Susan Kuehne

Susan Kuehne, Secretary

(SEAL)



STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgements in the State and County last aforesaid, this day personally appeared SUSAN KUEHNE, the Secretary of Berkshire Landings Condominium Association, Inc., a not-for-profit corporation, to me known to be the persons described in and who executed the foregoing instrument and she acknowledged to and before me that she executed the same on behalf of said corporation for the purposed therein expressed.

Witness my hand and official seal this 29th day of June, 2009.

Gwen G. Holcomb
NOTARY PUBLIC (SEAL)

My Commission Expires:



Gwen G. Holcomb
Commission # DD619370
Expires December 3, 2010
Bonded Troy Fair Insurance, Inc. 800-385-7019

Berkshire Landings

Amendment to Declaration Section 9 ASSOCIATION

Subsection 9.11 Fees For Processing Applications For Approval To Sell

A fee of one hundred dollars (\$100) is required for the processing of applications for approval or transfer of ownership of units.

Amendment to Declaration Section 12 USE RESTRICTIONS

Subsection 12.3 Pets

Amend as follows:

The keeping of pets is a privilege not a right. Two (2) domestic, non-exotic dogs weighing twenty-five (25) pounds or less each at maturity, and two (2) domestic non-exotic cats are permitted. An application form is required for the approval of the pets. No pets are allowed on the common elements except pets on a leash. No pet may be left unattended outside. The owner shall be responsible for properly removing and properly disposing of its pet's waste matter. The owner shall hold the Association harmless from any damage liability or loss arising from having a pet on the condominium property. The Board of Directors may require the removal of any pet which becomes an annoyance or nuisance to other residents and is entitled to recover from the owner any reasonable attorneys' fees incurred in enforcing or requiring the pet's removal.

Amendment to Declaration Section 12 USE RESTRICTIONS

Subsection 12.5 Parking

Amend as follows:

The only vehicles allowed to be kept or parked on a residential driveway or condominium assigned parking area and on no other part of the property except when completely enclosed within a residential garage are the following:

- A. Private passenger vehicles and marked police vehicles
- B. Private passenger vehicles commonly known as sports utility vehicles (SUV).
- C. Private passenger vans used solely for passenger transportation, having windows completely surrounding the passenger compartment and having factory installed seats.
- D. No vehicle designed for commercial purposes or bearing exterior advertising matter, lettering or sign shall park on residential driveway or condominium assigned parking area. Such vehicles can only be parked when completely enclosed in the residential garage.
- E. Delivery and service vehicles shall park in the driveway condominium parking area or street only for the time necessary to perform the delivery or service.
- F. No owner shall keep or park in excess of 24 hours on a residential driveway or condominium assigned parking area any pickup trucks, boats, trailers, mopeds, motorcycles, motor homes, travel trailers, recreational vehicles or campers, and any unsightly vehicles or vehicles not in operable conditions or validly licensed unless fully enclosed in a garage. The Board has the sole and exclusive authority to determine if a vehicle is "unsightly" and thus require it to be housed in a garage.
- G. Vehicles in violation of these declarations are subject to a fine and being towed at the owner's expense.

Amendment to Declaration Section 14 LEASING OF UNITS

Subsection 14 Leasing of Units

Amend as follows:

An owner intending to lease his unit shall give to the Board of Directors a written notice of such intention at least 30 days prior to the first day of occupancy into the unit 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. The Board may require a personal interview with any lessee and his or her spouse or significant other, if any, as a pre-condition to approval. The applicant must sign for having received and read the rules and regulations of the Association. A fee of one hundred dollars (\$100.00) must be paid to Berkshire Landings Condominium Association when the application form is presented for approval.

Addition of Subsection 14.5 Leasing of Units/Collection of Rents, Eviction

The legal responsibility for paying association assessments may not be delegated to the lessee. If a unit is leased and any special assessment or installment of a regular assessment for a unit remains unpaid for at least thirty (30) days after the due date and a Claim of Lien has been recorded, then upon written notice mailed to both owner and lessee of such delinquency, both owner and lessee agree that all future lease payments due under the lease shall be paid by lessee directly to the Association until such time as the Association notifies both owner and lessee that all sums due the Association have been paid in full. Such lease payments shall be funds of the Association to be utilized for any Association purpose at the discretion of the Board and shall only be remitted to the owner if full payment of all amounts due the Association have been paid by the owner and a Satisfaction of Claim of Lien has been recorded.

If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the unit owner.

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.

Retn:

PHILIP M FRANCOEUR JR
2375 TAMIAKI TR N #308
NAPLES FL 34103

2154197 OR: 2289 PG: 2386

REC 1113

28.50

RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL
03/04/97 at 08:41AM DWIGHT B. BROCK, CLERK

C E R T I F I C A T I O N

I, ROBERT H. GOLDBERG, Secretary of BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, hereby certify that a Special Meeting of the members was held on February 14, 1997 at 11:00 a.m. in the offices of Philip M. Francoeur, Jr., P.A. located at 2375 Tamiami Trail North, Naples, Florida, at which meeting a quorum (51%) was present in person or by proxy and by a unanimous vote of the members. An amendment was made to the Declaration of Condominium, specifically to correct the scrivener's error in Exhibits "A" and "B-1" attached thereto and the same was passed and the First Amendment to the Declaration of Condominium and the corrected Exhibits are attached hereto and made a part hereof.

BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.

By: Robert H. Goldberg
ROBERT H. GOLDBERG
Secretary

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared ROBERT H. GOLDBERG, the Secretary of Berkshire Landings Condominium Association, Inc., a Florida not-for-profit corporation, to me known to be the person described in and who executed the foregoing instrument and he acknowledged to and before me that he executed the same on behalf of said corporation for the purposes therein expressed.

Witness my hand and official seal this 14 day of February, 1997.

Philip M. Francoeur, Jr.
NOTARY PUBLIC (S E A L)
My Commission Expires:



Philip M. Francoeur, Jr.
MY COMMISSION # C0588280 EXPIRES
September 25, 2000
BONDED THRU TROY FAIR INSURANCE INC

FIRST AMENDMENT
TO THE
DECLARATION OF CONDOMINIUM
OF
BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.

This First Amendment made this 14th day of February, 1997, to the Declaration of Condominium which original was recorded on February 4, 1997 in O.R. Book 2279, Pages 1448 et seq., of the Public Records of Collier County, Florida.

The following change to the Declaration of Condominium was approved by the Board of Directors and incorporated therein by reference:

1) Exhibit "A" to the original Declaration of Condominium is corrected to reflect the proper legal description which consists of the legal description described on page 1 of Exhibit "A" less the legal description on page 2 of Exhibit "A" as shown in the attached replacement Exhibit "A".

2) Exhibit "B-1" to the original Declaration of Condominium is corrected to reflect that the property Description thereon should read:

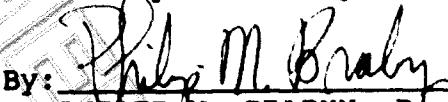
"Berkshire Landings as recorded in Plat Book 26, at Page 3, of the Public Records of Collier County, Florida"

as shown in the attached replacement Exhibit "B-1".

BERKSHIRE LANDINGS CONDOMINIUM
ASSOCIATION, INC., a Florida
not-for-profit corporation

Attested:

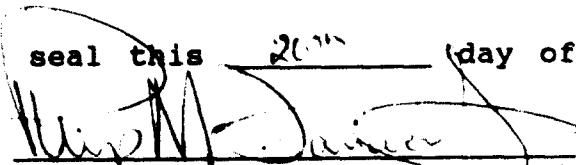

ROBERT H. GOLDBERG,
Secretary

By: 
PHILIP M. BRABYN, President
(Corporate Seal)

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared PHILIP M. BRABYN and ROBERT H. GOLDBERG, the President and Secretary, respectively, of Berkshire Landings Condominium Association, Inc. to me known to be the persons who executed the foregoing instrument and they acknowledged to and before me that they executed the same on behalf of said corporation for the purposes therein expressed.

Witness my hand and official seal this 20th day of February, 1997.


NOTARY PUBLIC (S E A L)
My Commission Expires:



Philip M. Francois, Jr.
MY COMMISSION # CCS88280 EXPIRES
September 25 2000
BUNDLED THRU TROY FARM INSURANCE INC.

OR: 2289 PG: 2388

C O N S E N T

I, CRAIG D. SHREVE, the owner of Unit #201, Berkshire Landings, a Condominium, hereby consent to the action taken by the President and Secretary of Berkshire Landings Condominium Association to correct the scrivener's error in Exhibits A and B-1, Declaration of Condominium at a Special Meeting of the members held on February 14, 1997 for that specific purpose.

Signed, sealed and delivered
in the presence of:

Phillip J. Shreve
Witness #1

Russell B. Fink
Witness #2

Craig D. Shreve

Date: 2-14-97

STATE OF PA
COUNTY OF LEHIGH

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared CRAIG D. SHREVE to me known to be the person described herein by examination of either [] personally known or [] driver's license and who executed the foregoing instrument and he acknowledged to and before me that he executed the same for the purposes therein expressed.

Witness my hand and official seal this 15 day of February, 1997.

Clarabelle Dengler
NOTARY PUBLIC (S E A L)
My Commission Expires:

NOTARIAL SEAL
CLARABELLE DENGLER, Notary Public
Cresfield, Lehigh County
My Commission Expires Dec. 23, 1999

EXHIBIT "A" page 1 of 2

THE COLONIES AT BERKSHIRE LAKES
(SECOND 4-ACRE TRACT)

NOT

LEGAL DESCRIPTION

Commence at the Northeast Corner of Tract "B", Berkshire Lakes Unit Three as recorded in Plot Book 18, Pages 15 - 17 of the Public Records of Collier County, Florida and run North 58'35"00" West for 7.23 feet to a point of curvature of a curve concaved Southwesterly; thence run 177.18 feet along the arc of said curve having a Radius of 916.00 feet, a central angle of 1105'00", a chord of 176.92 feet and a chord bearing of North 64°27'30" West to a point of tangency; thence run North 70'00'00" West for 238.85 feet to the POINT OF BEGINNING of the parcel of land hereinafter described; thence continue North 70'00'00" West for 168.00 feet; thence run South 20'00'00" West for 415.14 feet; thence run South 65'00'00" East for 172.59 feet; thence run North 68°28'27" East for 170.31 feet; thence run South 75°28'45" East for 228.82 feet; thence run North 14°30'14" East for 56.51 feet; thence run South 75°28'45" East for 18.06 feet; thence run North 14°30'15" East for 120.26 feet; thence run North 22°31'01" West for 112.42 feet to a point of non-tangential intersection with a curve concaved Southwesterly; thence run 48.87 feet along the arc of said curve having a Radius of 682.00 feet, a central angle of 3°03'05", a chord of 48.87 feet and a chord bearing of North 68°28'28" West to a point of tangency; thence run North 70'00'00" West for 120.31 feet to a point of curvature of a curve concaved Southwesterly; thence run 19.18 feet along the arc of said curve having a radius of 8100 feet, a central angle of 13°14'38", a chord of 19.14 feet and a chord bearing of North 78°37'18" West to a point of tangency; thence run North 83°14'38" West for 44.23 feet; thence run North 70'00'00" West for 56.47 feet; thence run North 20'00'00" East for 46.34 feet to the POINT OF BEGINNING.

Containing 4.00 Acres more or less.

"Less and except the land described in Exhibit "A" page 2 of 2"

COPY

EXHIBIT "A" page 2 of 2

NOT

LEGAL DESCRIPTION

THE COLONIES AT BERKSHIRE LAKES

PHASE II

COMMENCE at the Northeast corner of Tract "B" of the plat thereof BERKSHIRE LAKES UNIT PHASE as recorded in Plat Book 16, Pages 19 through 17 of the Public Records of Collier County, Florida; thence along a curve to the left having a radius of 916.00 feet, a central angle of 09 18'20", an arc length of 146.81 feet, and a chord which bears H63 20'46"E to its point of tangency; thence H70 00'00"E a distance of 210.85 feet to a point for corner; thence S20 00'00"W a distance of 46.34 feet to a point for corner; thence S20 00'00"E a distance of 55.97 feet; thence S83 14'38"E a distance of 66.23 feet to a point of curve; thence along a curve to the right having a radius of 83.00 feet, a central angle of 13 14'38", an arc length of 19.19 feet, and a chord which bears S76 37'17"E to its point of tangency; thence S70 00'00"E a distance of 120.91 feet to a point of curve; thence along a curve to the right having a radius of 882.00 feet, a central angle of 03 03'05", an arc length of 46.97 feet, and a chord which bears S60 28'27"E to a non-tangential line; thence S22 51'01"E a distance of 112.42 feet; thence S14 30'15"E a distance of 120.26 feet; thence H78 29'46"E a distance of 10.06 feet; thence S14 30'14"E a distance of 96.51 feet; thence H73 29'43"E a distance of 01'37" feet; thence S88 29'27"E a distance of 203.11 feet; thence H63 00'00"E a distance of 193.40 feet; thence N29 42'31"E a distance of 204.40 feet; thence H19 27'30"E a distance of 73.84 feet; thence N20 00'00"E a distance of 88.13 feet; thence S70 00'00"E a distance of 00.00 to the POINT OF BEGINNING.

Dated by:

John B. Richardson, P.L.S. 3406
 John B. McAdoo & Associates, Inc.
 101 South Tamiami Trail, Suite 202
 Naples, Florida 33962

COPY

Exhibit "B-1"

BERKSHIRE LANDINGS, A CONDOMINIUM

2. 3 A. MINTON

SECTION 32, TOWNSHIP 49 SOUTH, RANGE 26 EAST.
LYING IN
COLLER COUNTY, FLORIDA.

SURVEY BASED ON BOUNDARY LANDMARKS AS RECORDED IN PLAT BOOK 28 AT

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN). UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAN PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO
DETERMINE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL,
STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.
THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS
OWNED BY THE STATE OF FLORIDA OR ANY OTHER SOVEREIGNTY, APPROPRIATION
RIGHTS AND THE TITLE TO ALLEDGED LANDS, IF ANY.

ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

BEARINGS ARE BASED ON THE CENTERLINE OF BELLEVILLE BOULEVARD AS BEING
NORTH TO DOTON WEST.

ALL UNIT BOUNDARY DIMENSIONS REPRESENT DIMENSIONS TO EXISTING WALLS.

DATE OF LAST FIELD WORK: 1/28/97

PARCEL CONTAINS 1.01 ACRES MORE OR LESS.

DESCRIPTION:

RED SHIRE LANDINGS AS RECORDED IN PLAT BOOK
26 AT PAGE 3, OF THE PUBLIC RECORD OF COLLEGE
COUNTY, FLORIDA.

 - CONCRETE POWER POLE
 - WOOD POWER POLE
 - WATER METER
 - ELECTRIC SERVICE
 - CABLE T.V. HOOKUP
 - UNITED TELEPHONE REQUEST
 - WATER VALVE
 - FIRE HYDRANT
 - CATCH BASIN
 - JAMP POST

GRAPHIC SCALE 1" = 50°

CONDOMINIUM SURVEY

Bean, Whitaker, Lutz & Barnes, Inc.

CONSULTING ENGINEERS AND SURVEYORS

13141-8 MCCARTHY BOULEVARD, VONT MERRI, FLORIDA

卷之三

卷之三

DATE	PRODUCT NO.	CHARGE BY	SCALE	WEIGHT	FILE NO. (1-4)
1/30/97	30126	SAM	1" = 50'	1 OR 2	32-19-26

CONDONUM PLAT BOOK -- PAGE

BEHN, PHOTACKER, LUTZ & BARNES, INC.
CONSULTING ENGINEERS AND SURVEYORS
1341-9 Napacon Building
Perry Street, Pleasanton, Calif.
(415) 421-1281

Retn:

PHILIP M FRANCOEUR JR
2375 TAMiami TR N #308
NAPLES FL 34103

2213558 OR: 2337 PG: 0905

RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL
08/08/97 at 09:24AM DWIGHT E. BROCK, CLERK

REC FEE

24.00

C E R T I F I C A T I O N

I, ROBERT H. GOLDBERG, Secretary of BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, hereby certify that a Special Meeting of the members was held on July 30, 1997 at 11:00 a.m. in the offices of Philip M. Francoeur, Jr., P.A. located at 2375 Tamiami Trail North, Naples, Florida, at which meeting a quorum (51%) was present in person or by proxy and by a unanimous vote of the members. An amendment was made to the Declaration of Condominium, specifically to include the attached Surveyor's Certificate and the same was passed and the Surveyor's Certificate and drawings are attached hereto and made a part hereof.

BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.

By: Robert H. Goldberg
ROBERT H. GOLDBERG
Secretary

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared ROBERT H. GOLDBERG, the Secretary of Berkshire Landings Condominium Association, Inc., a Florida not-for-profit corporation, to me known to be the person described in and who executed the foregoing instrument and he acknowledged to and before me that he executed the same on behalf of said corporation for the purposes therein expressed.

Witness my hand and official seal this 31 day of July, 1997.

NOTARY PUBLIC (S E A L)
My Commission Expires:



Philip M. Francoeur, Jr.
MY COMMISSION # CCG00200 EXPIRES
September 25, 2000
DANEDRI THRU TROY FAIR INSURANCE, INC.

Bean, Whitaker, Lutz & Barnes, Inc.**CONSULTING ENGINEERS AND SURVEYORS**

13141-8 McGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919
(941) 481-1331
FAX (941) 481-1073

N

Surveyor's Certification**for**

**Units 104, 105, 106, 204, 205 and 206 Only,
Berkshire Landings, A Condominium**

NOT

I, William E. Bean, Registered Florida Surveyor and Mapper, hereby certify that the construction of the improvements of Units 104, 105, 106, 204, 205 and 206 Only, Berkshire Landings, A Condominium, as indicated on the attached Exhibits "B & C" dated 7/24/97 is substantially complete so that these materials, together with the provisions of the Declaration of Condominium describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements, limited common elements and of each unit can be determined from these materials and that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common element facilities serving the building in which the units to be conveyed are located have been substantially completed.

Bean, Whitaker, Lutz & Barnes, Inc.


William E. Bean, P.S.M. #LB 3261WEB/AJ
W49-CERT3

July 29, 1997

30346

COPY

BERKSHIRE LANDINGS, A CONDOMINIUM

Lying in
SECTION 32, TOWNSHIP 49 SOUTH, RANGE 28 EAST.
COLLIER COUNTY, FLORIDA.

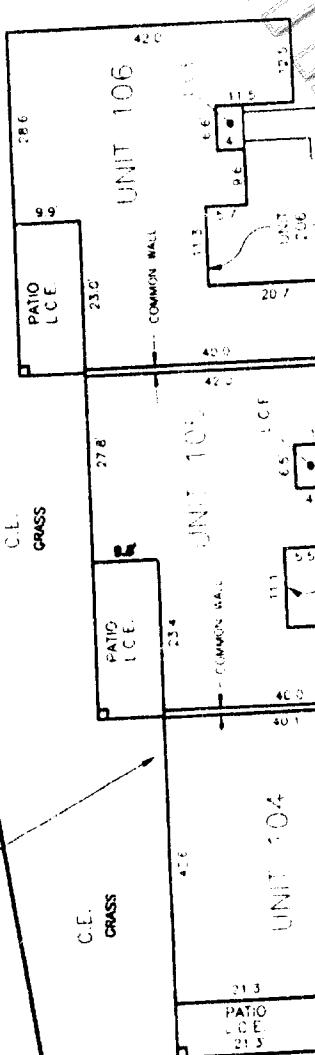
CONDOMINIUM PLAT BOOK PAGE

EXHIBIT "B" & "C"

BUILDING B BUILDING

(2) STORY MASONRY BUILDING

PROPERTY LINE



SEE SHEET
POOL AREA

UNIT BOUNDARY DEFINITIONS:

(TAKEN FROM CONDOMINIUM DECLARATION)

5.3. UNIT BOUNDARIES. EACH UNIT INCLUDES ITS OWNAGE AND THAT PART OF THE BUILDING THAT LIES WITHIN THE FOLLOWING BOUNDARIES.

A. UPPER AND LOWER BOUNDARIES. THE UPPER AND LOWER BOUNDARIES OF THE UNIT ARE THE PERIMETRAL BOUNDARIES EXTENDED TO THEIR PLANAR INTERSECTIONS WITH THE PERIMETRAL BOUNDARIES:

- THE HORIZONTAL PLANE OF THE UNFINISHED LOWER SURFACE OF THE CEILING.
- THE HORIZONTAL PLANE OF THE UNFINISHED UPPER SURFACE OF THE CONCRETE FLOOR OF THE UNIT.

B. PERIMETRAL BOUNDARIES. THE PERIMETRAL BOUNDARIES OF THE UNIT ARE THE VERTICAL PLANES OF THE UNFINISHED EXTERIOR SURFACES OF THE WALLS BOUNDING THE UNIT INCLUDING ITS GARAGE EXTENDED TO THEIR PLANAR INTERSECTIONS WITH EACH OTHER AND WITH THE UPPER AND LOWER BOUNDARIES.

C. APERTURES. WHERE THERE ARE APERTURES IN ANY BOUNDARY INCLUDING BUT NOT LIMITED TO WINDOWS OR DOORS, SUCH BOUNDARIES EXTEND TO THE INTERIOR OR UNFINISHED SURFACES OF SUCH APERTURES, AND ALL FRAMEWORKS THEREOF.

D. EXCLUSIONS. A UNIT DOES NOT INCLUDE INTERIOR BEARING WALLS OR PARTITIONS AND DOES NOT INCLUDE PIPES, DUCTS, WIRING, CONDUITS AND OTHER UTILITIES BY WHICH ANY INTERIOR WALL OR PARTITION FOR FURNISHING OF UTILITY SERVICES TO OTHER UNITS

UNIT ELEVATIONS:

SECOND FLOOR CEILING (VAULTED)	+25.5
SECOND FLOOR	+22.3
FIRST FLOOR CEILING	+21.5
FIRST FLOOR	+12.5
GARAGE FLOOR	+12.0

UNIT BOUNDARIES BUILDING "B"

FIRST FLOOR

GRAPHIC SCALE 1" = 20'



Bean, Whitaker, Lutz & Barnes, Inc.

CONSULTING ENGINEERS AND SURVEYORS

13141-8 MCCREER BOULEVARD, FORT MYERS, FLORIDA 33918 (941) 491-1331

SPR303468.DWG	7/24/97	PROJECT NO.	DRAWING NO.	SCALE	SET	REV. NO.	DATE
				1" = 20'	2 OF 2		32-49-26

OR: 2337 PG: 0908

ARTICLES OF INCORPORATION
OF
BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.

97 FILED
JUN 27 1993
TALLAHASSEE
FLORIDA
9-38

Pursuant to Section 617.013 of the Florida Statutes, these Articles of Incorporation are created by Sunset 12, Inc., a Florida corporation, 390 Broad Avenue South, Suite 200, Naples, FL 34102, as sole incorporator, for the purposes set forth below.

ARTICLE I

NAME AND ADDRESS: The name of the corporation, herein called the "Association", is BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC. The mailing address and street of the principal office of the corporation is initially 390 Broad Avenue South, Suite 200, Naples, FL 34102.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to Florida condominium law for the operation of Berkshire Landings, a Condominium, located in Collier County, Florida.

The Association is organized and exists upon a non-stock basis as a corporation for-for-profit under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed to or inure to the private benefit of any member, director, or officer of the Association. For the accomplishment of its purposes, the Association has all of the common law and statutory powers and duties of the corporation not-for-profit under the laws of the State of Florida, except as limited or modified by these Articles, the Declaration of Condominium and the By-laws of Berkshire Landings, a Condominium, or by Florida condominium law; and it has all of the powers and duties reasonably necessary to operate said condominium pursuant to its Declaration as it may hereafter be amended, including but not limited to the following:

- A. To make and collect assessments against members of the Association to pay 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 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 to make further improvements to the property.
- E. To make, amend, and enforce reasonable rules and regulations governing the use of the common elements.

F. To approve or disapprove the transfer, mortgage, ownership, and occupancy of units, as provided by the Declaration of Condominium and By-laws.

G. To enforce the provisions of the Florida condominium law, the Declaration of Condominium, these Articles, the By-laws and Rules of the Association.

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

I. To employ accountants, attorneys, architects, and other professional personnel to perform services required for the Association's proper operation.

J. All funds and the title to all property acquired by the Association are held for the benefit of its members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation, and the By-laws of Berkshire Landings, a Condominium, and Florida law.

K. If the Developer of the condominium holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

(1) Assessment of the Developer as a unit owner for capital improvements;

(2) Any action by the Association that would be detrimental to the sale of units by the Developer. An increase in assessments for common expenses without discrimination against the Developer is deemed not to be detrimental to the said of units.

ARTICLE III

MEMBERSHIP:

A. The members of the Association consist of all record owners of a fee simple interest or a life estate in one or more units in the corporation, and as further provided in the By-laws. After termination of the condominium, the members consist of those who were members at the time of such termination.

B. After receiving approval of the Association as required by the Declaration of Condominium, change of membership in the Association is established by recording in the Public Records of Collier County, Florida, a deed or other instrument and by the delivery to the Association of a copy of such instrument.

C. The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except

OR:
2279 PG: 1496

as an appurtenance to the member's unit.

D. The owners of each unit, collectively, are entitled to one vote in Association matters as set forth in the Declaration of Condominium and By-laws. The manner of exercising voting rights is as set forth in the By-Laws.

ARTICLE IV

TERM: The term of the Association is perpetual commencing on the date of execution of these Articles of Incorporation.

ARTICLE V

BY-LAWS: The By-laws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VI

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

A. **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by petition of the owners of one-third of the units by a written instrument signed by them.

B. **Notice.** When any amendment or amendments to these Articles is proposed by the Board or unit owners, such proposed amendment or amendments shall be transmitted to the President of the Association, who shall thereupon determine which of the methods in paragraph C below shall be used for voting. The appropriate notices and copies of the proposed amendment(s) shall be mailed to the members of the Association not more than ninety (90) days after transmittal to the President.

C. **Vote.** Except as otherwise required by Florida law, these Articles of Incorporation may be amended by vote of two-thirds of the voting interests present and voting at any annual or special meeting at which there was a quorum, or by approval in writing of the owners of two-thirds of the units without a meeting, provided that notice of any proposed amendment(s) has been given to the members of the Association, and that the notice contains a fair statement of the proposed amendment(s).

D. **Effective.** An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE VII

DIRECTORS AND OFFICERS:

A. **Number of Directors.** The affairs of the Association are administered by the Board of Directors consisting of the number of directors determined by the By-Laws, which is initially three and

shall never be less than three directors nor more than five directors. Directors must be members of the Association or spouses of such members, except for those directors appointed by the Developer.

B. Election of Directors. Directors of the Association are elected by the members in the manner determined by the By-laws. Directors may be removed and vacancies on the Board of Directors are filled in the manner provided by the By-laws.

C. Officers. The business of the Association is conducted by the officers designated in the By-laws. The officers are elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and serve in accordance with the provisions of the By-laws. The names and addresses of the officers who serve until their successors are designated by the Board of Directors are:

Philip M. Brabyn President
Suite #200
390 Broad Avenue South
Naples, FL 34102

ARTICLE VIII

INITIAL DIRECTORS:

The initial directors of the Association who hold office until their successors are elected and qualified or until removal or resignation are:

Philip M. Brabyn
3700 Rum Row
Naples, FL 34102

Robert H. Goldberg Director
11698 Quail Village Way
Naples, FL 34119

Marian T. Brabyn
3700 Rum Row
Naples, FL 34102

ARTICLE IX

INITIAL REGISTERED AGENT:

The initial registered office of the corporation is 390 Broad Avenue South, Suite #200, Naples, FL 34102. The initial registered agent at said address is: Robert H. Goldberg.

ARTICLE X

INDEMNIFICATION:

The Association shall indemnify any director and officer, and any former officer or director of the Association against all expenses, costs, damages, and liabilities including attorney's fees, actually and reasonably incurred by or imposed in connection with any action or inaction concerning the corporation taken while action as an officer or director or any legal proceeding (or settlement or appeal of such proceeding) to which the person may be a party because of his being or having been a director or officer of the Association. The foregoing rights of indemnification does not apply to:

(1) Gross negligence or willful misconduct in office by any director or officer;

(2) Any criminal action, unless the director or officer acted in good faith and in a manner he reasonably believed was in, or not opposed to, the best interests of the Association, and had no reasonable cause to believe his action was unlawful;

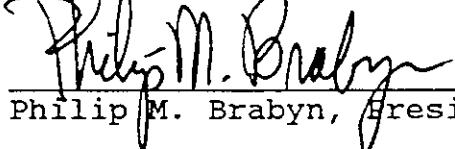
An officer or director shall not be liable to the corporation for any loss or damage sustained by it for action taken or omitted by him if he in good faith exercised the care of a prudent man, in good faith acted or failed to act based upon advice of counsel for the corporation or on the books and records of the corporation, or followed what he believed to be sound accounting and business practice.

To the extent that a director or officer has been successful on the merits or otherwise in defense of any action, lawsuit, or proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

The foregoing rights of indemnification are in addition to and not exclusive of all other rights to which such director or officer may be entitled.

WHEREFORE, the incorporator has caused these presents to be executed this 24th day of January, 1997.

SUNSET 12, INC.,
a Florida corporation


Philip M. Brabyn

Philip M. Brabyn, President

STATE OF FLORIDA
COUNTY OF COLLIER

Before me, a notary public authorized to take acknowledgments in the State and County last aforesaid, this day personally appeared Philip M. Brabyn, President of Sunset 12, Inc., a Florida corporation, to me known to be the incorporator described in and who executed the foregoing instrument and he acknowledged to and before me that he executed the same for the purposes therein expressed on behalf of the corporation.

Witness my hand and official seal this 24th day of January, 1997.



Philip M. Francoeur, Jr.
MY COMMISSION # CC588280 EXPIRES
September 25, 2000
BONDED THRU TRIOY FAIR INSURANCE, INC.

NOTARY PUBLIC (S E A L)
My Commission Expires:

ACCEPTANCE OF REGISTERED AGENT

I, Robert H. Goldberg, agree as Resident Agent to accept Service of Process for BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC., at its registered office and am familiar with and agree to comply with the provisions of Sections 48.091 and 607.0505 of the Florida Statutes in keeping said office open.

Dated this _____ day of January, 1997.


ROBERT H. GOLDBERG

SEARCHED
INDEXED
FILED
FEB 27 1997
CLERK OF COURT, FLORIDA

FILED

97 JAN 27 AM 9:38

EXHIBIT "E"

BY-LAWS

OF

BERKSHIRE LANDINGS CONDOMINIUM ASSOCIATION, INC.

1. GENERAL

1.1 By-Laws. These are the By-Laws of Berkshire Landings Condominium Association, Inc., hereafter referred to as the "Association", a corporation not for profit organized under the laws of Florida as a residential condominium owners' association for the purpose of administering Berkshire Landings, A Condominium, pursuant to Florida condominium law.

1.2 Principal Office. The principal office of the Association is 390 Broad Avenue South, Naples, Florida 33940, until the construction of the condominium is completed, at which time it will be at the condominium.

1.3 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.

2. MEMBERS

2.1 Qualification. The members of the Association consist of all persons who are record owners of a fee simple or life estate interest in any unit in the condominium. In the event of a life estate only the life tenant is qualified to be a member. If the owner of a condominium parcel is not a natural person, the subject entity shall designate a natural person who is entitled to occupy the condominium parcel as primary occupant, and only such natural person shall be considered a member for the purpose of exercising that unit's voting rights. In the case of a unit subject to an agreement for deed, the contract vendee is deemed the owner of the unit.

2.2 Voting Rights. The members of the Association are entitled to one vote for each unit owned by them. The total votes shall not exceed 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 person, his right to vote is established by the record title to the unit. If a unit is owned jointly by two or more persons, that unit's vote may be cast by any record owner present at the meeting at which the vote is taken. If two or more owners of a unit are present and cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a unit is not a natural person, the vote of that unit shall be cast by the unit's primary occupant designated as set forth in Section 2.1 above.

2.3 Change of Membership. Following written approval of the Association, as elsewhere required in the condominium documents, a change of membership in the Association is established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing record title to a unit in the condominium and by the delivery to the Association of a copy of such instrument, along with a written designation of primary occupant if an owner is not a natural person. The grantee in such instrument thus becomes a member of the Association and the membership of the prior owner is thereby automatically terminated. The new owner's name and address will be entered on the roster of the condominium members.

2.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former member from any liability or 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 owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS

3.1 Annual Meeting. The members shall meet at least once in each calendar year and such meeting shall be the annual meeting. The annual meeting shall be held in Collier County, Florida, each year in January at a time and place designated by the Board of Directors, for the purpose of electing Directors (after turnover) and transacting any other business duly authorized to be transacted by the members.

3.2 Special Members' Meetings. Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and must be promptly called by the Board upon receipt of a written request from the members entitled to cast 20 percent of the votes of the entire membership. Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members making the request. Business at any special meeting is limited to the items specified in the request and contained in the notice of meeting.

3.3 Notice of Meetings. Notice of the annual members' meetings must include an agenda. Notice of all members' meetings (including the annual meeting) must include the time, date, and place of the meeting. The notice must be mailed to each member at his address as it appears on the books of the Association, except that if a member waives in writing the right to receive notice by mail, the notice may be furnished by personal delivery. Notwithstanding the foregoing, where a unit is owned by more than one person, the Association shall provide notice of meetings to just one address which Developer initially identifies for such purpose and thereafter to the address that one or more of the owners of the unit gives the Association in writing, except that if no address is given or the unit owners cannot agree on an address, notice shall be delivered to the address provided on the deed of record. The unit owner bears the responsibility for notifying the Association of any change of address or ownership. The notice must be mailed at least fourteen days prior to the date of the meeting. An officer of the Association or the manager providing notice of the members' meeting shall provide an affidavit to be included in the official records of the Association affirming that the notice was mailed to each owner at the last address furnished to the Association. Notice of the annual meeting shall be posted in a conspicuous place on the condominium property at least fourteen continuous days prior to the annual meeting.

3.4 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by general or limited proxy, of persons entitled to cast one-third of the votes of the entire membership. After a quorum has been established at a members' meeting, the subsequent withdrawal of members, so as to reduce the number of members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

3.5 Vote Requirement. The acts or resolutions approved by a majority of the votes cast at a meeting at which a quorum is attained are binding upon all unit owners for all purposes, except where a higher vote is required by law or by any provision of the condominium documents.

3.6 Proxies. Votes at a meeting may be cast in person or by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting and shall not be used for the election of Directors. A limited proxy and not a general proxy shall be used to vote on waiving or reducing reserves, waiving financial statement requirements, amending the Declaration, By-Laws, or Articles of Incorporation and voting on any other matter for which a vote is required or permitted under Florida condominium law. A general proxy may be used for other matters and for nonsubstantive changes to items for which a limited proxy is given. No proxy shall be valid for a period longer than ninety days after the date of the first meeting for which it was given. A proxy is revocable. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time, and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting. Holders of proxies need not be members. No proxy is valid if it names more than one person as the holder of the proxy, (but it may name an alternate) but the holder has the right, if the proxy so provides, to substitute another person to hold the proxy. The Association must keep in its records for one year all proxies used at a meeting.

3.7 Adjourned Meetings. Any duly called meeting of the members may be adjourned to a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained.

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

- A. Call of roll and certification of quorum and proxies.
- B. Proof of notice of meeting or waiver of notice.
- C. Reading and disposal of any unapproved minutes.
- D. Election of Directors (if applicable).
- E. Reports of Officers.
- F. Reports of Committees.
- G. Unfinished Business.
- H. New Business.
- I. Adjournment.

3.9 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection at reasonable times for a period of seven years after the meeting by members or their authorized representatives and by Board members.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) governs the conduct of the Association meetings when not in conflict with the Déclaration of Condominium, Florida law or these By-Laws.

3.11 Action by Members Without Meeting. The members shall hold an annual meeting and after turnover of Association control at the annual meeting shall act on the budget and on reserve accounts, for election of Directors, and for such other business as may come before the meeting. Otherwise, any action required or permitted to be taken at a meeting of the members unless otherwise barred by law may be taken without a meeting if written consents, setting forth the action to be taken, are signed by the members entitled to vote having not less than the minimum number of votes that would be necessary to take such action at a meeting, or a majority of the total voting interests in the Association, whichever is greater. Upon receiving the requisite number of written consents, the Board

OR: 2279 PG: 1503

of Directors shall take the authorized action by adopting a resolution to that effect. Within ten days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed to be in derogation of the members' rights to call a special meeting of the membership, as elsewhere provided in these By-Laws.

4. BOARD OF DIRECTORS. The management of the property and business of the Association and the administration of the affairs of the Association shall be by a Board of Directors who may exercise all Association powers not specifically prohibited, only subject to the approval of the members when specifically required.

4.1 Number and Terms of Service. Three Directors shall constitute the entire Board of Directors. While the Developer has control, Directors shall be named by the Developer and shall serve until removed by the Developer or the Director resigns. After turnover of Association control by the Developer to unit owners, Directors shall be elected for staggered terms of office; one for a term that ends at the annual election after the next annual election, and two for a term that ends at the next annual election. Thereafter each Director shall be elected for a term of two years. In the case of a vacancy the replacement Director will serve the length of the unexpired term unless otherwise provided by law.

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

4.3 Nominations and Elections.

A. Notice. Not less than sixty days before a scheduled election, the Association shall mail or deliver to each unit owner entitled to vote a first notice of the date of election. Together with the written notice and agenda provided for in Section 3.3 of these By-laws, the Association shall mail or deliver a second notice of meeting to all unit owners entitled to vote, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include with the ballot mailing an information sheet no larger than 8-1/2 inches by 11 inches if furnished by the candidate not less than thirty-five days before the election. The costs of the mailing and delivery and copying are to be borne by the Association.

B. Candidate. After turnover, any unit owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Secretary of the Association not less than forty days before the scheduled election meeting.

C. Quorum. There is no quorum requirement, however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of Directors.

D. Election. After turnover, the Board of Directors shall be elected by a written ballot or voting machine and not by proxies, and the regular election shall be on the date of the annual meeting. No unit owner is allowed to have any other person vote his ballot. Ballots shall be secret and ballots improperly cast shall be invalid. The unit owners entitled to vote shall elect as many Directors as there are regular terms of Directors expiring or vacant. If, however, there are not more candidates than vacancies on the Board of Directors, no election or ballot is required. Directors shall be elected by a plurality of the votes cast. No owner of any single unit may cast more than one vote for any person nominated as a Director; it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes are elected, except that a run-off will be held to break a tie vote.

4.4 Vacancies on the Board. If the office of any Director becomes vacant for any reason other than the recall of Board members, a majority of the remaining Directors, even if less than a quorum, shall promptly choose a successor to hold office for the unexpired term. If the vacancy is caused by the recall of a board member or members and less than a majority of the board members are removed, the vacancy or vacancies shall be filled by a majority of the remaining Directors. If, as a result of recall, a majority of the board members are removed the vacancies shall be filled in accordance with the procedures set forth by Florida law.

4.5 Removal of Directors. Any or all Directors, except those appointed by the Developer, may be removed with or without cause by a two-thirds vote of all unit owners entitled to vote, either by a signed writing or at any meeting called for that purpose. If a petition is filed for the removal of more than one Director, the question shall be voted separately as to each Director sought to be removed. If a special meeting is called by 10 percent 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 petition. The meeting must be held not less than fourteen days nor more than sixty days from the date that notice of the meeting is given. The unexcused absence of any Director from three consecutive regular Board meetings authorizes the Board, by majority vote, to remove that Director from office and the appoint a successor.

4.6 Organizational Meeting. The organizational meeting of the Board of Directors shall be held immediately following the meeting at which Directors were elected, or within ten (10) days after the election of new Directors at such place and time as may be fixed by the Directors at the annual meeting at which they were elected.

4.7 Meetings. Meetings of the Board may be held at such time and place in Florida, as determined from time to time by a majority of the Directors. There shall be a meeting in December of each year to adopt an annual budget for the following fiscal year. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram, at least three days prior to the day named for such meeting. Any unit owner may tape-record or videotape meetings of the Board. Unit owners have the right to speak with reference to all designated agenda items. The Association may adopt reasonable rules regarding recording and the videotaping of the meeting and the frequency and duration and manner of unit owner statements. Any item not included in the meeting notice may be taken up on an emergency basis by at least a majority of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. See Section 6.2 for special notice requirements for the budget meetings and Section 6.6 for special notice requirements for the imposition of special assessments.

4.8 Special Meetings. Special meetings of the Board may be called by the President, and shall be called by the Secretary at the written request of any two of the Directors. Notice of a meeting shall comply with the requirements in Sections 4.7 and 4.9 hereof.

4.9 Notice to Owners. Meetings of the Board of Directors and any committee shall be open to members and notices of all meetings, with a designation of agenda items, shall be posted conspicuously on the condominium property at least forty-eight continuous hours in advance of each Board meeting, except in an emergency. Written notice of any Board meeting at which nonemergency special assessments, or at which an amendment to rules regarding unit use will be proposed or considered, shall be mailed or delivered to the unit owners and posted conspicuously on the condominium property not less than fourteen days prior to the meeting. Evidence of

compliance with this fourteen day notice shall be made by an affidavit executed by the person providing the notices and filed with the Association's official records. Upon notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the condominium property or Association property upon which all notices of Board meetings shall be posted. Notice of any meeting where assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessment.

4.10 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver is deemed equivalent to the giving of notice.

4.11 Quorum of Directors. A quorum shall consist of a majority of all Directors. Members of the Board of Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone or similar communicative equipment providing all members attending or participating by telephone can hear every other member. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.12 Vote Required. The acts approved by a majority of those Directors present at a meeting at which a quorum is present 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 law. Directors may not vote by proxy or secret ballot at Board meetings, except that officers may be elected by secret ballot. A vote or abstention for each Board member present shall be recorded in the minutes.

4.13 Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.14 Adjourned Meetings. At any meeting of the Board of Directors, the majority of those present may adjourn the meeting from time to time. At any meeting reconvened after adjournment, provided a quorum is present and the appropriate notice given, any business that might have been transacted at the meeting originally called may be transacted.

4.15 The 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 those present.

4.16 Powers and Duties of Board of Directors. All powers and duties granted to the Association by law, as modified and set forth in the Declaration, Articles of Incorporation, and these By-Laws, shall be exercised by the Board of Directors, subject to approval or consent of the unit owners only when such is specifically required.

4.17 Receipt of Complaint by Board of Directors. When a unit owner files a written complaint by certified mail with the Board of Directors, the Board shall respond to the unit owner within thirty days of receipt of the complaint. The Board shall give a substantive response to the complaint, notify the unit owner that a legal opinion has been requested, or notify the unit owner that advice has been requested from the Division of Florida Land Sales and Condominiums. The failure to act within thirty days or to notify the unit owner within thirty days after the action is taken precludes the Board from receiving attorneys' fees and costs in subsequent litigation, administrative proceedings, or arbitration arising out of the complaint.

4.18 Director's Fees. No compensation or fees shall be paid to the Directors for services as Directors. No officer or director or manager shall accept any item or service of value for his benefit or for the benefit of his immediate family, when consideration has not been provided, from any person providing or proposing to provide goods or services to the Association.

4.19 Reimbursement of Expenses. Directors may be reimbursed for any reasonable expenditures incurred for the benefit of the Association upon approval of the President, or in the case of expenditures by the President, upon approval of the Vice President.

4.20 Committees. The Board of Directors may appoint from time to time such committees as the Board may deem necessary and convenient for the efficient and effective operation of the condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The Board, by resolution adopted by two-thirds of the Directors, may remove members of any committee established by it.

4.21 Conflict of Interest. No contract or other transaction between this Association and one or more of its Directors, or any corporation, firm, association, or entity in which one or more of its Directors are Directors or officers, or are financially interested, shall be either void or voidable because of such relationship or interest, or because such Director or Directors are present at the meeting of the Board of Directors where such transaction is authorized, approved or ratified, or because a Director's vote is counted for such authorization, approval or ratification if:

A. The fact and nature of such relationship or interest is disclosed or known to the Board prior to the authorization, approval or ratification of the contract or transaction; or

B. The contract or transaction is fair and reasonable to the Association at the time it is authorized by the Board.

5. OFFICERS

5.1 Officers and Elections. The executive officers of the Association shall be a President, and a Vice President, who must be Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be removed with cause by vote of two-thirds of all Directors at any meeting. Any person may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers and designate their powers and duties that the Board finds necessary to manage the affairs of the Association.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be 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. He 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, or the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors prescribe.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, 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. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or the signature of the President. 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 has been designated.

5.5 Treasurer. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit 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 of Directors. He shall disburse the funds of the Association making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one has been designated.

5.6 Compensation of Officers. No compensation shall be paid to officers of the Association for their services as officers. This provision does not preclude the Board of Directors from employing officers as employees of the Association.

5.7 Vacancies. If any office becomes vacant, the remaining Directors, by a majority vote, may choose a successor to hold office for the unexpired term.

5.8 Resignation. Any Director or officer may resign his office at any time by an instrument in writing, effective upon receipt by the Board, unless otherwise specified in the resignation.

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

6.1 Depository. All funds of the Association shall be maintained separately in the Association's name. Reserve funds shall not be commingled with the operating funds of the Association. No agent, employee, officer, or Director of the Association shall commingle any Association funds with his or her funds or with the funds of any other condominium association or community association. The Association shall maintain its accounts in such financial institutions in the State of Florida as are designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investments.

6.2 Budget. The Board of Directors shall, at its December meeting each year, adopt an annual budget for common expenses for the next fiscal year. A copy of the proposed budget and a notice stating the time and place of the meeting shall be mailed to or served on all the unit owners not less than fourteen days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The

proposed budget shall show for each item for which reserves are maintained the estimated life, estimated replacement cost, estimated remaining useful life, and current balance in each reserve account.

6.3 Reserves for Capital Expenditures and Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust the replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life a reserve item caused by deferred maintenance. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by limited proxy at a duly called meeting 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 6.2 above. Reserves are waived for the first two years of the operation of the Association. Reserves funded under this Section 6.3 shall be used only for the purposes for which they were reserved, unless their use for other purposes is first approved by a majority of the voting interests present and voting at a duly called members' meeting. If reserves are waived and have already been partially collected, any overage paid by unit owners shall be subtracted from the next quarterly assessment for the unit.

6.4 General Maintenance Reserves. In addition to the statutory reserves provided in 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for general operating expenses, repairs, minor improvements, or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any project within the above-stated purposes.

6.5 Assessments. All regular annual assessments shall be paid in quarterly installments, due and payable in advance, on the first day of January, April, July, and October. Failure to send or receive the assessment notice is no excuse for nonpayment. If an annual budget has not been adopted at the time a monthly installment is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and shall continue at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage shall be added or subtracted from each unit's next due quarterly installment.

6.6 Special Assessments. Special assessments may be made by the Board of Directors when necessary to meet unusual, unexpected, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Condominium and these By-Laws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. Notice of such assessments must contain a statement of the purpose(s) for the assessments (see Section 4.9 for additional notice requirements). The funds collected must be spent for the stated purpose(s), but upon completion of the stated purpose any excess funds may either be returned to the members or applied as a credit toward future assessments.

6.7 Fidelity Bonds. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association. The term "persons who control or disburse funds of the Association" means those individuals authorized to sign checks, and the President, Secretary and Treasurer of the Association. If the Associations' annual gross receipts do not exceed \$100,000, the bond shall be in the principal sum of not less than \$10,000 for each such person. If the Association's annual gross receipts exceed \$100,000, but do not exceed \$300,000, the bond shall be in the principal sum of \$30,000 for each person. The premiums on such bonds are to be paid by the Association.

6.8 Financial Information. After the close of each fiscal year, the Board shall cause financial statements or financial reports to be mailed and delivered as required by law.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by a vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all members.

6.10 Application of Payments. All payments on account by a unit owner shall be applied as to interest, delinquencies, costs, and attorneys' fees, other charges, and general or special assessments, in such manner and amounts as the Board of Directors may determine, subject to provisions of the Declaration and Florida Statutes Section 718.116(3).

6.11 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code.

6.12 Official Records.

The Association shall maintain each of the following items, when applicable, which shall constitute the official records of the Association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to Florida Statutes Section 718.301(4).
2. A photocopy of the recorded Declaration of Condominium and of each amendment to the Declaration.
3. A photocopy of the recorded Bylaws of the Association and each amendment to the Bylaws.
4. A certified copy of the Articles of Incorporation of the Association and each amendment thereto.
5. A copy of the current rules of the Association.
6. A book or books which contain the minutes of all meetings of the Association, of the Board of Directors, and of unit owners, which minutes shall be retained for a period of not less than seven years.
7. A current roster of all unit owners and their mailing addresses, unit identifications,

voting certifications, and, if known, telephone numbers.

8. All current insurance policies of the Association.
9. A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the unit owners have any obligations or responsibility.
10. Bills of Sale for all property owned by the Association.
11. Accounting records for the Association according to good accounting practices. All accounting records shall be maintained for a period of not less than seven years. The accounting records shall include, but are not limited to:
 - (a) Accurate, itemized, and detailed records of all receipts and expenditures.
 - (b) A current account and a quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
 - (c) All audits, reviews, accounting statements, and financial reports of the Association..
 - (d) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one year.
12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of one year from the date of the election, vote, or meeting to which the document relates.
13. A copy of the current question and answer sheet as described by Florida Statutes Section 718.504, which shall be updated annually.
14. All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall be maintained within the state of Florida. The records of the Association other than those items not accessible to unit owners by statute shall be made available to a unit owner within five working days after receipt of a written request by the Board or its designee. This may be complied with by having a copy of the official records of the Association available for inspection or copying on the condominium property or Association property.

The official records of the Association are open to inspection by any Association member or the authorized representative of such

member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member. The Association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an Association to provide the records within ten working days after receipt of a written request shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages incurred, or minimum damages for the Association's denial. The minimum damages shall be \$50 per calendar day up to ten days, with the calculation to begin on the 11th working day after receipt of the written request. The failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection. The Association shall maintain an adequate number of copies of the Declaration, Articles of Incorporation, Bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in Florida Statutes Section 718.504 on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners:

1. A record which was prepared by an Association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, until the conclusion of the litigation or adversarial administrative proceedings.
2. Information obtained by an Association in connection with the approval of the lease, sale, or other transfer of a unit.
3. Medical records of unit owners.

7. RULES AND REGULATIONS

The Board of Directors may, from time to time, adopt and amend reasonable administrative rules and regulations governing the use and maintenance of the common elements and the units, provided such rules and regulations are not in conflict with any of the condominium documents and Florida condominium law. Copies of such rules and regulations shall be furnished to each unit owner. A tenant is subject to the rules and regulations of the Association.

8. COMPLIANCE AND DEFAULT; REMEDIES

In addition to the remedies provided by law and in the Declaration, the following provisions concerning Berkshire Landings apply concerning any default, breach or violation of law or Association requirements.

8.1 Fines. The Board of Directors of the Association may levy fines as hereafter provided against units whose owners commit violations of the condominium documents or Association rules and regulations or whose unit occupants, licensees or invitees commit

such a violation. No fine shall be imposed until the unit owner and, if applicable, his licensees or invitees, has been given not less than fourteen days written notice by certified or registered mail advising the member of the charges against him, the amount of the fine and providing an opportunity for a hearing (which hearing shall be held not less than 14 days from the date of the notice). The above notice shall specify the date, time and place of the hearing, and contain a statement of the provisions of the declaration, association By-laws or Association Rules, which have allegedly been violated and a short and plain statement of the matters asserted by the association. The party against whom the fines may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. The hearing must be held before a committee of other unit owners. If the committee does not agree with the fine, the fine may not be levied. No unpaid fine will become a lien against a unit. No fine may exceed \$100 per violation. A fine may, however, be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, provided that no such fine in the aggregate exceeds \$1,000.

8.2 Correction of Health and Safety Hazards. Any violations by a unit or unit owner, his occupants, licensees or invitees which are deemed by the Board of Directors to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the unit owner, and payment may be enforced by a lien against said unit with the same force and effect as if the charge were a part of the unit's assessments for common expenses.

8.3 Mandatory Nonbinding Arbitration. In the event of a dispute between one or more unit owners or a unit owner or owners and the Association arising from the operation of the condominium, other than involving levy of a fee or assessment, that primarily involves title to any unit or common element or the interpretation or enforcement of a warranty, the parties shall petition for non-binding arbitration prior to filing a lawsuit, under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation. An arbitration decision shall be final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within thirty days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party may be awarded the costs of the arbitration, reasonable attorney's fees, or both, in an amount determined in the discretion of the arbitrator. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorney's fees and costs incurred in enforcing the arbitration award.

8.4 Availability of Remedies. Each member, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to remedies utilized by the Association, 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 majority's right to enjoy the condominium property free from unreasonable restraint and annoyance.

9. TRANSFER OF ASSOCIATION CONTROL; DEVELOPER'S RIGHTS

9.1 Members' Rights to Elect Board of Directors. When owners other than the developer own 15 percent or more of the units, the owners other than the Developer shall be entitled to elect no less than one-third of the members of the Board of Directors.

Unit owners other than the Developer are 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 50 percent of the units that will be operated ultimately by the Association have been conveyed to purchasers;

B. Three months after 90 percent of the units that will be operated ultimately by the Association have been conveyed to purchasers;

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

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

E. Seven years after the recording of the Declaration creating the first phase of this condominium, or at any other time prescribed by law.

9.2 Developer's Right to Designate Members of Board of Directors. Except as provided above, the Developer is entitled to designate at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5 percent of the units.

9.3 Members' Meetings to Elect Director(s). Within seventy-five days after the unit owners other than the Developer are entitled to elect one or more Directors, the Association shall call, upon not less than sixty days notice, a meeting of the unit owners to elect the member or members of the Board. The meeting 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 at the meeting.

9.4 Developer's Rights. So long as the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

A. Any amendment to the condominium documents which would adversely affect the Developer's rights; or

B. Any action of the Association that would be detrimental to the sales of units by the Developer. An increase in assessments for common expenses shall not be deemed to be detrimental to the sales of units.

9.5 Transfer of Association Control. At the time that unit owners other than the Developer elect a majority of the Directors of the Association, the Developer shall relinquish control of the Association, and the unit owners shall accept control. Simultaneously, the Developer shall 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. Provided, however, that the Developer shall have a period of not more than ninety days from the date control is

relinquished to deliver the financial records of the Association. The Developer may turn over control of the Association to unit owners other than the Developer prior to the above mentioned dates, in its sole discretion, by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty 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. DEFAULT

10.1 Default. A unit owner, regardless of how his title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the unit owner. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. A first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. The mortgagee's liability is, however, limited to a period not exceeding six months, but in no event shall the first mortgagee's liability exceed 1 percent of the original mortgage debt. The first mortgagee's liability for such expenses or assessments does not commence until thirty days after the date the first mortgagee received the last payment of principal or interest.

10.2 Failure to Pay. Assessments and installments thereon paid on or before ten days after the date due shall not bear interest. If payment of the full amount due is not made within this period, interest accrues on the amount due from the date payment was first due (without regard to any extensions) at the annual rate of 18 percent. There is an administrative late fee, in addition to such interest, for an amount equal to the greater of \$25.00 or 5 percent of each assessment due for which payment is late. Such administrative late fee will accrue on the eleventh day following the date payment was first due (without regard to any extensions) if payment is not made prior to that time. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection (which the Association is entitled to collect), and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. Assessments and installments thereon become due and the unit owner shall become liable for said assessments or installments on the date set by the Association for payment.

10.3 Association Acquisition. If the Association becomes the owner of a unit or a member of the Association by reason of foreclosure, it may sell such membership to another corporation, association, or other entity, which in its judgment would be suitable as a member in the Association, and which could make effective use of the membership and the properties managed by the Association without undue detriment or harm to the other members of the Association. Alternatively, the Association may retain such membership and prorate the cost of maintaining same among the remaining members of the Association. In the event of the legal termination of an individual interest in the condominium parcel or the occupancy rights thereunder in favor of the Association, the member or any other persons in possession by or through the right of the member, shall promptly quit and surrender the unit to the Association in good repair, ordinary wear and tear and damage by

fire or other casualty excepted, and the Association has the right to enter said unit and to possess the unit. The member, for himself and any successor in interest by operation of law or otherwise, hereby waives any and all notice and demand for possession, if such is required by applicable law.

10.4 Remedies. In the event of violation of the provisions of the Declaration, Articles of Incorporation, or By-Laws of the Association, as the same are or may be hereafter constituted, or applicable condominium law which affects the condominium or the Association, the Association, on its own behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of such documents or may sue for damages, or take such other action, or seek other legal remedies as it may deem appropriate. If such legal action is brought against a unit owner, the losing party shall pay the other's reasonable attorneys' fees and court costs.

10.5 Agreement to Provisions. Each owner of a unit, for himself, his heirs, successors, and assigns, agrees to the foregoing provisions relating to default, regardless of the availability of other adequate legal procedures. It is the intent of all owners of units to provide the Association with a procedure which will enable it at all times to operate on a businesslike basis.

11. AMENDMENT OF BY-LAWS

Amendments to these By-Laws are proposed and adopted in the following manner:

11.1 Proposed. Amendments to these By-Laws are proposed by a majority of the Board or upon petition by one-third of the unit owners by instrument in writing signed by them.

11.2 Vote. Upon any amendment to these By-Laws being proposed, such proposed amendment shall be submitted to a vote of the members no later than the next annual meeting for which proper notice can be given. Except as otherwise provided by law, or by specific provision of the Condominium Documents, these By-Laws may be amended by concurrence of two-thirds of the voting interests present and voting at any annual or special meeting at which there was a quorum, provided that notice of any proposed amendment has been given to all the members in accordance with Florida law. Amendments may also be adopted without a meeting by obtaining unanimous written consent from all members.

11.3 Recordation. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

12. INDEMNIFICATION

Every officer and Director of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees incurred by or imposed on him in connection with any legal proceeding in which he may be a party, or in which he may become involved by reason of his being or having been a Director or officer of the Association even if he is not an officer or Director at the time the expenses are incurred. The officer or Director shall not be indemnified if he is guilty of gross negligence or willful misconduct or has breached his fiduciary duty to the members of the Association or committed a criminal act. The Association is not liable, however, for payment of a voluntary settlement unless it is first approved by the Board

of Directors. The foregoing rights shall be in addition to and not exclusive of all other rights to which the Director or officer may be entitled.

13. MISCELLANEOUS

13.1 Gender. Whenever the masculine or singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine, or neuter, singular or plural, as the context requires.

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

13.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these By-Laws and the Declaration of Condominium or the Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation prevail over the provisions of these By-Laws.