

EXHIBIT D

By Laws

**AMENDED AND RESTATED
BY-LAWS
OF
OPUS CONDOMINIUM ASSOCIATION, INC.**

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

1. **Identity.** The By-Laws of Islamorada Condominiums Association of the Shores, Inc. (presently known as Opus Condominium Association, Inc.) were adopted as of March 7, 2006 (the "Original By-laws") and the members desire to amend and restate such Original By-Laws. Therefore, these Amended and Restated By-Laws of OPUS CONDOMINIUM ASSOCIATION, INC. ("Association"), a corporation not for profit incorporated under the laws of the State of Florida and organized for the purpose of administering that certain condominium located in Volusia County, Florida and known as Opus Condominium, f/k/a Islamorada, a Condominium (the "Condominium"), are in complete substitution for and replacement of any and all prior versions of the Association's Bylaws, including the Original By-Laws, as they may have been amended from time to time.

1.1 **Principal Office.** The principal office of the Association shall be at 2071 S. Atlantic Avenue, Daytona Beach Shores, Florida, 32118 or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

1.2 **Fiscal Year.** The fiscal year of the Association shall commence on the date the Declaration of Condominium is recorded and terminate twelve months thereafter at the end of the month in which the recording occurs.

1.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not For Profit", and the year of incorporation.

2. **Definitions.** For convenience, these Amended and Restated By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association, as amended, as the "Articles." Additionally, the term "Developer" shall mean the original Creating Developer (as defined in the Declaration of Condominium) who no longer owns any interest in any Unit or the Condominium. The other capitalized terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration of Condominium for the Condominium, unless otherwise provided in these By-Laws, or unless the context otherwise requires.

3. **Members.**

3.1 **Annual Meeting.** The annual Members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time. There shall be an annual meeting every calendar year and, to the extent possible, no later than 13 months after the last preceding annual meeting. The purpose of the meeting shall be, except as otherwise provided, to elect Directors and to transact any other business authorized to be transacted by the Members, or as stated in the notice of the meeting sent in advance to Owners.

3.2 **Special Meetings.** Special meetings of Members shall be held at such places as provided for annual meetings. Special meetings may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the Members of the Association. A meeting to recall any director may be called by Owners holding at least 10% of the voting interests. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

3.3 **Participation by Owners.** Each Owner shall be a Member of the Association. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Owners may speak at annual and special meetings of Members, committee meetings and Board meetings with reference to all designated agenda items. An Owner does not have the right to speak with respect to items not specifically designated on the agenda, but the Board may permit an Owner to speak on such items in its discretion. Every Owner who desires to speak at a meeting, may do so, provided that the Owner has filed a written request with the Secretary of the Association not less than 48 hours prior to the scheduled time for commencement of the Members' meeting and not less than 24 hours prior to the scheduled time for a Board meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), each Owner speaking at a meeting shall be limited to a maximum of three minutes. An Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:

(a) The only audio and video equipment and devices an Owner may use is equipment which does not produce distracting sound or light emissions;

(b) Audio and video equipment must be assembled and placed in position in advance of the commencement of the meeting;

(c) Anyone videotaping or recording shall not be permitted to move about the meeting room to facilitate the recording; and

(d) At least 48 hours prior written notice for Members' meeting and not less than 24 hours prior written notice for Board meeting shall be given to the Secretary of the Association by any Owner desiring to make an audio or video taping of the meeting.

3.4 **Notice of Meeting; Waiver of Notice.** Notice of a meeting of Members stating the time and place and the purposes for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be sent by mail, hand delivered or electronically transmitted to each Owner, unless the Owner has waived in writing the right to receive such notice. The delivery or mailing shall be to the address of the Member as it appears on the roster of Members. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to a single address initially identified for that purpose by the Developer and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or, if no address is given, if the Owners disagree, or if the

Association is reasonably unsure as to where to send notice for any reason, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice shall be effected not less than 14 nor more than 60 continuous days prior to the date of the meeting. Proof of mailing of the notice shall be given by retention of post office receipts or by affidavit. The Board shall adopt by rule, and give notice to Owners of, a specific location on the Condominium Property upon which all notices of Members' meetings shall be posted.

Notice of specific meetings may be waived before or after the meeting and the attendance of any Member (or person authorized to vote for such Member) shall constitute such Member's waiver of notice of such meeting, except when such Member's (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

3.5 **Quorum**. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy, of Persons entitled to cast at least 33-1/3% of the votes of Members at such meeting.

3.6 **Voting**.

(a) **Number of Votes**. An Owner shall be entitled to cast one vote for each Unit owned, unless such voting rights are suspended in accordance with these By-Laws and the Act. The vote of a Unit shall not be divisible.

(b) **Majority Vote**. The acts approved by a majority of the votes at a meeting at which a quorum shall have been attained shall be binding upon all Owners for all purposes except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Owners" and "majority of the Members" shall mean those Owners having more than 50% of the then total authorized votes voting at any meeting of the Owners at which a quorum shall have been attained. Similarly if some greater percentage of Members is required in these By-Laws or in the Declaration or Articles, it shall mean such greater percentage of the votes of Members voting and not of the Members themselves.

(c) **Voting Member**. If a Unit is owned by one individual, such individual's right to vote shall be established by the roster of Members. If a Unit is owned by more than one individual, any individual Owner shall be entitled to cast the vote for the Unit unless a specific individual shall be designated by a certificate signed by all of the record owners of the Unit according to the roster of Owners and filed with the Secretary of the Association. Such designated individual need not be an Owner, nor one of the joint owners. If more than one co-owner is present in person or by proxy and the co-owners cannot agree on a particular vote then the right to vote on that subject matter shall be forfeited. If a Unit is owned by a corporation, limited liability company, or a partnership, the individual entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation, appropriate signatory of the limited liability company or a general partner of the partnership and filed with the Secretary of the Association. Such individual need not be an Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to

cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote of the Owner(s) of such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose. In such case, the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed. If a Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting Member in the manner provided above. Such designee need not be an Owner. In the event a husband and wife do not designate a voting Member, the following provisions shall apply:

(i) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).

(ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Unit vote just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

(iii) If both are present at a meeting and concur, either one may cast the Unit's vote.

(d) No vote or other right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, including a quorum or any election.

3.7 **Proxies**. Votes may be cast in person or by proxy. Except as specifically otherwise provided, Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form approved by the Division. Limited proxies shall be permitted for votes taken to: waive or reduce reserves; waive financial statements; amend the Declaration, Articles or By-Laws; or, except as indicated below, for any other matter requiring or permitting a vote of Owners. No proxy, limited or general, shall be used in the election of Board members, except to the extent of a replacement of a Director after a recall which may be made by limited proxy. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meeting. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the individual authorized to cast the vote for the Unit (as above described) and filed with the Secretary at least 24 hours before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Owners. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person

(including a designee of Developer). If a proxy expressly provides, any proxy holder may appoint in writing, a substitute to act in his or her place. If such provision is not made, substitution is not permitted.

3.8 **Adjourned Meetings.** If any proposed meeting cannot be organized because a quorum has not been attained, the Members present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Unless revoked by a Member for any reason, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting.

3.9 **Order of Business.** If a quorum has been attained, the order of business at annual Members' meetings, and, if applicable, at other Members' meetings, shall be:

- (a) Collection of ballots;
- (b) Call to order by President;
- (c) Appointment by the President of a chairman of the meeting (who need not be a Member or a director);
- (d) Proof of notice of the meeting or waiver of notice;
- (e) Reading of minutes;
- (f) Reports of officers;
- (g) Reports of committees;
- (h) Appointment of inspectors of election;
- (i) Determination of number of Directors to be elected;
- (j) Election of Directors by counting ballots;
- (k) Unfinished business;
- (l) New business;
- (m) Adjournment.

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

3.10 **Minutes of Meeting.** The minutes of all meetings of Members shall be kept in a book available for inspection by Owners or their authorized representatives and Board Members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

3.11 **Action Without A Meeting.** To the extent lawful and not inconsistent with the Act or the Declaration, any action required or permitted to be taken at any annual or special meeting of Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Members (or persons authorized to cast the vote of any such Members) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of Members at which a quorum is obtained. Any action by written consent shall not be effective unless signed by Members having the requisite number of votes necessary to authorize the action within 60 days of the date of the earliest dated signature and receipt by the Association. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within 10 days after obtaining any action by written consent, notice shall be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

4. **Directors.**

4.1 **Membership.** The affairs of the Association shall be governed by a Board of not less than three nor more than nine Directors, the exact number to be determined in the first instance in the Articles and thereafter, except as otherwise provided, from time to time, upon majority vote of the Members. Except for Directors appointed by Developer, Directors must be Owners or their spouses; or in the event any Owner is an entity, Directors must be designees of such Owner entity.

4.2 **Election of Directors.**

(a) Election of Directors shall be held at the annual meeting of Members, except as provided in these By-Laws to the contrary. At least 60 days prior to a scheduled election, the Association shall mail, deliver or electronically transmit to each Owner entitled to vote, a first notice of the date of election. Any Owner or other eligible person desiring to be a candidate for the Board shall give written notice of his or her intention to be a candidate to the Secretary of the Association at least 40 days prior to the scheduled election. At least 35 days prior to the scheduled election, the Association shall then mail, deliver or electronically transmit a second notice of the meeting to all Owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ inches by 11 inches furnished by the candidate to the Association (at least 35 days prior to the election). The second notice of the meeting, the ballot and information sheet(s), if any, shall be mailed, delivered or electronically transmitted at least 35 days prior to the election. The costs of mailing or delivery and copying shall be borne by the Association. The Association has no liability for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

(b) The election of directors shall be by written ballot or voting machine. Proxies may not be used in electing the Board at general elections or to fill vacancies caused by resignation or otherwise, but a limited proxy may be used to fill a vacancy resulting from the

recall of a director, in the manner provided by the rules of the Division. Elections shall be decided by a plurality of those ballots and votes cast. There shall be no quorum requirement, however at least 20% of the eligible voters must cast a ballot in order to have a valid election of Members of the Board. There shall be no cumulative voting.

(c) Notwithstanding the provisions of this Section 4.2, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

(d) Within 90 days after being elected or appointed to the Board, each newly elected or appointed Director shall certify in writing to the Secretary of the Association that he or she has read the Declaration, the Articles, these By-Laws, and the Association's current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. In lieu of this written certification, the newly elected or appointed Director may submit a certificate of satisfactory completion of the educational curriculum administered by a Division approved condominium education provider. A Director who fails to timely file the written certification or educational certificate is suspended from service on the Board until he or she complies with this Subsection. The Board may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for 5 years after a Director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any action.

(e) A person who has been suspended or removed by the Division under the Act, or who is delinquent for more than 90 days in the payment of any fee, fine or Assessment to the Association is not eligible for election as a Director. A person who has been convicted of any felony in Florida or in any United States District or Territorial Court or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in Florida is not eligible for election as a Director unless he or she has had his or her civil rights restored for at least five years prior to the date such person seeks to run for the position of a Director. The validity of any action by the Board is not affected if it is later determined that a Director was ineligible for Board membership due to having been convicted of a felony.

4.3 **Vacancies and Removal.**

(a) Except as to vacancies resulting from removal of Directors by Members, vacancies in the Board of Directors occurring between annual meetings of Members shall be filled by a majority vote of the remaining Directors even if less than a quorum, provided that all vacancies in directorships to which Directors were appointed by Developer pursuant to the provisions of Section 4.16 shall be filled by Developer without the necessity of any meeting.

(b) Any Director elected by Members other than the Developer may be removed by concurrence of a majority of the votes of the Members at a special meeting called for that purpose by Members accounting for at least 10% of the voting interests or by written agreement signed by a majority of Owners. The vacancy in the Board of Directors so created shall be filled by the Members at a special meeting called for such purpose, or by the Board of

Directors, in the case of removal by a written agreement unless such agreement also designates a new Director to take the place of the one removed. The conveyance of all Units in the Condominium owned by a Director (other than appointees of Developer) shall constitute the resignation of such Director. Any Director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.

(c) Until a majority of the Directors are elected by the Members other than Developer, neither the first Directors nor their replacements, nor any other Directors named by Developer shall be subject to removal by Members other than Developer. The first Directors and their replacements may be removed and replaced by Developer without the necessity of any meeting.

(d) If the Association fails to fill vacancies on the Board of Directors sufficient to constitute a quorum in accordance with Section 4.9, any Owner may apply to the circuit court within the County for the appointment of a receiver to manage the affairs of the Association. At least 30 days prior to applying to the circuit court, the Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action indicating the amount of time the Association has to fill the vacancies before such Owner will apply to the circuit court. If during the time specified (which shall be at least 30 days after posting and mailing) the Association fails to fill the vacancies, the Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted Board of Directors and shall serve until the Association fills vacancies on the Board sufficient to constitute a quorum.

4.4 **Term.** Except as provided to the contrary in these By-Laws, the term of each Director's service shall extend until the next annual meeting of the Members, or until the Director is removed in the manner elsewhere provided and such board members may stand for reelection. If the number of Directors whose terms have expired exceeds the number of eligible Members showing interest in or demonstrating an intention to run for the vacant positions, each Director whose term has expired is eligible for reappointment to the Board and need not stand for reelection. Co-owners of a Unit may not serve as members of the Board of Directors at the same time unless they own more than one Unit or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy. A Director more than 90 days delinquent in the payment of any monetary obligation to the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law. A Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. If a person has any such criminal charge pending, he or she may not be appointed or elected to a position as a Director. However, if the charges are resolved without a finding of guilt, the person shall be reinstated for the remainder of his or her term of office, if any.

4.5 **Organizational Meeting.** Except for the Directors designated in the Articles, the organizational meeting of newly-elected or appointed Members of the Board of Directors shall be held within 20 days of their election or appointment at such place and time as shall be fixed

by the Directors at the meeting at which they were elected or appointed. Notice of the organizational meeting shall be provided in accordance with Section 4.6.

4.6 **Meetings.** Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, fax, email or telegraph, and shall be transmitted at least three days prior to the meeting. Meetings of the Board of Directors and any committee of the Board shall be open to all Owners except for such meetings with the Association's counsel with respect to proposed or pending litigation. Notice of Board meetings shall be posted conspicuously on the Condominium Property at least 48 continuous hours in advance for the attention of the Members of the Association, except in the event of an emergency. Written notice of any meeting of the Board at which regular or non-emergency special Assessments, or at which amendment to rules regarding Unit use will be proposed, discussed or approved, shall specifically state such purpose and, with respect to Assessments, indicate the nature, estimated cost and description of the purpose for such Assessments. Such notice shall be mailed or delivered to all Owners and posted conspicuously on the Condominium Property not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14 day notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association. The Board shall adopt by rule, and give notice to Owners of, a specific location on the Condominium Property upon which all notices of Board and/or committee meetings shall be posted. Special meetings of the Directors may be called by the President and must be called by the President or Secretary at the written request of one-third of the Directors.

4.7 **Owner Participation.** Any Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Division. The right to attend such meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Owner statements. If at least 20% of the voting interest petition the Board to address any item relating to the Condominium, the Board shall at the next regular meeting or at a special meeting of the Board held in either event not later than 60 days of the Board's receipt of the petition, place the item on the agenda for the meeting.

4.8 **Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by such Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when such Director's attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

4.9 **Quorum.** A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws. After a quorum has been established at a meeting, the subsequent withdrawal of members, so as to reduce the number of voting interests entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any actions taken at the meeting

or any adjournment. Notwithstanding the above, when some or all of the Board of Directors or members of a Committee meet by telephone conference, those Board of Directors or members of a Committee attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker shall be utilized so that the conversation of those Board of Directors or members of a Committee attending by telephone may be heard by the Board of Directors or members of a Committee attending in person, as well as by any Owners present at the meeting.

4.10 **Adjourned Meetings.** If at any proposed meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required under these By-Laws. At any re-scheduled adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

4.11 **Joinder in Meeting.** Any Director may attend a meeting by telephone if a speaker-phone is available at the meeting so that other Directors and Owners can hear the Director participating by telephone and such Director can hear the meeting. Any Director so participating by telephone shall be counted toward the quorum and shall be entitled to vote by telephone. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as present for the purpose of determining a quorum or used as a vote for or against the action taken.

4.12 **Presiding Officer.** The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside). In the absence of the presiding officer, the Directors present may designate any person to preside.

4.13 **Order of Business, Voting.**

(a) If a quorum has been attained, the order of business at Directors' meetings shall be:

- (i) Proof of due notice of meeting;
- (ii) Reading and disposal of any unapproved minutes;
- (iii) Reports of officers and committees;
- (iv) Election of officers;
- (v) Unfinished business;
- (vi) New business;
- (vii) Adjournment.

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

(b) A Director present at a meeting shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A Director who abstains from voting on any action taken on any matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot except for election of officers.

4.14 **Minutes of Meetings.** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Owners, or their authorized representatives, and Board Members at any reasonable time. The minutes shall record any vote of abstention for each Director. The Association shall retain these minutes for a period of not less than seven years.

4.15 **Executive Committee; Other Committees.** The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three or more Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in paragraphs (g) and (p) of Article 5.

The Board may, by resolution, also create other committees and appoint persons to such committees and invest in such committees such powers and responsibilities as the Board shall deem advisable.

4.16 **Rights of Developer.**

(a) Notwithstanding anything to the contrary contained in this Article 4 or otherwise, the Board shall consist of three directors during the period Developer is entitled to appoint a majority of the Directors. Developer shall have the right to appoint all of the Directors until Owners other than Developer own 15% or more of the Units that will be operated ultimately by the Association. When Owners other than Developer own 15% or more of such Units, they shall be entitled to elect not less than 1/3 of the Directors. Owners other than Developer shall be entitled to elect not less than a majority of the Directors upon the first occurring of:

(i) three years after 50% of the Units that will be operated ultimately by the Association have been conveyed to purchasers,

(ii) three months after 90% of the Units that will be operated ultimately by the Association have been conveyed to Purchasers,

(iii) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers and

none of the others are being offered for sale by Developer in the ordinary course of business,

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

(v) when Developer files a petition seeking protection in bankruptcy,

(vi) when a receiver for Developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the Association or the Members, or

(vii) seven years after recording the Declaration.

Developer may (but shall not be obligated to) elect at least one Director as long as Developer holds for sale in the ordinary course of business 5% of the Units that will be operated ultimately by the Association.

(b) Developer may, in Developer's discretion, transfer control of the Association to Owners other than Developer prior to the dates set forth in this Section by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Developer to elect Directors and assume control of the Association. If Developer gives at least 75 days' notice of Developer's decision to cause its appointees to resign to Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Owners other than the Developer refuse or fail to assume control.

(c) Within 75 days after the Owners other than Developer are entitled to elect a Director or Directors, or sooner if Developer has elected to accelerate such event as indicated in this Section, the Association shall call, and give not less than 60 days' notice of a meeting of the Owners to elect such Director or Directors. The meeting may be called and the notice given by any Owner if the Association fails to do so.

(d) At the time Owners other than Developer elect a majority of the Directors, Developer shall relinquish control of the Association and such Owners shall accept control. At that time (except as provided in paragraph (vii)), Developer shall deliver to the Association, at Developer's expense, all property of the Owners and of the Association held by or controlled by Developer, including but not limited to the following items, if applicable:

(i) The original or a photocopy of the recorded Declaration of Condominium with all amendments. If a photocopy is provided, Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;

(ii) A certified copy of the Articles of Incorporation of the Association;

- (iii) A copy of the By-Laws of the Association;
- (iv) The minute books, including all minutes, and other books and records of the Association;
- (v) Any rules and regulations which have been adopted;
- (vi) Resignations of resigning officers and Directors appointed by Developer;
- (vii) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association through the date of relinquishment of control. The records shall be reviewed (or audited if required by the Act) by an independent certified public accountant who shall render a report indicating review (or audit) in accordance with generally accepted accounting standards prescribed by the Florida Board of Accountancy. The accountant performing the review shall examine, to the extent necessary, supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine whether Developer was charged and paid the proper amounts of Assessments; the materials required under this subparagraph (vii) shall be delivered within 90 days of delivery of control;
- (viii) Association funds or the control thereof;
- (ix) All tangible personal property that is the property of the Association or is or was represented by Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property;
- (x) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components servicing the Improvements and the Condominium Property, with a Certificate, in affidavit form, of Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components servicing the Improvements and the Condominium Property;
- (xi) A list of the names and addresses of all contractors, subcontractors and suppliers, of which Developer had knowledge at any time in the development of the Condominium, utilized in the construction or remodeling of the improvements and the landscaping of the Condominium Property and/or Association Property;
- (xii) Insurance policies;
- (xiii) Copies of any certificates of occupancy issued for the Condominium Property;

(xiv) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one year prior to the date the Owners assume control of the Association;

(xv) All written warranties of contractors, subcontractors, supplies and manufacturers, if any, that are still effective;

(xvi) A roster of Owners and their addresses and telephone numbers, if known, as shown on Developer's records;

(xvii) Leases of the Common Elements and other leases to which the Association is a party, if applicable;

(xviii) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the Person or Persons performing the service;

(xix) All other contracts to which the Association is a party; and

(xx) The report regarding maintenance, useful lives and replacement costs of certain Common Elements required pursuant to Section 718.301(4)(p) of the Act.

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

(a) Operating and maintaining the Common Elements and Association Property.

(b) Determining the expenses required for the operation of the Condominium and the Association.

(c) Collecting Assessments from Owners.

(d) Employing and dismissing personnel necessary for maintenance and operation of the Common Elements and Association Property.

(e) Adopting and amending rules and regulations concerning details of operation and use of the Condominium Property and Association Property, subject to a right of the Owners to overrule the Board as provided in Article 13.

(f) Maintaining bank accounts on behalf of the Association and designating the signatories required.

(g) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its Members; the power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described in these By-Laws and in the Declaration.

(h) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association or its designee, including, without limitation, at foreclosure or other judicial sales.

(i) Selling, leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association or its designee.

(j) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.

(k) Obtaining and reviewing insurance for the Condominium Property.

(l) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings or otherwise.

(m) Enforcing obligations of Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.

(n) Levying fines against appropriate Owners for violations of the Condominium Documents or the rules and regulations established by the Association to govern the conduct of such Owners. No fine shall be levied except after giving reasonable notice to the affected Owner and, if applicable, his tenant, licensee or invitee and opportunity for a hearing before a committee of non-director Owners. No fine may exceed \$100 per violation, but a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing. No such fine shall in the aggregate exceed the greater of \$1,000 or the maximum permitted by the Act and no fine shall become a lien upon a Unit.

(o) Suspending the right of an Owner or the Unit's occupant, licensee, or invitee to use Common Elements, common facilities, or any other Association Property if the Owner is delinquent for more than 90 days in paying a monetary obligation due to the Association. The suspension shall continue until the monetary obligation is paid. This subsection does not apply to Limited Common Elements intended to be used only by that Unit, Common Elements that must be used to access the Unit, Utility Services provided to the Unit, parking spaces, or elevators. The Association must levy the reasonable suspension at a properly noticed Board meeting, and after the imposition of such suspension, the Association must notify the Owner and, if applicable, the Unit's occupant, licensee, or invitee by mail or hand delivery.

(p) Suspending the voting rights of a Member due to nonpayment of any monetary obligation due to the Association which is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the Association.

(q) Purchasing or leasing Units for use by resident superintendents and other similar persons or for the general use and enjoyment of the Owners.

(r) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association Property. The consent of Owners of at least two-thirds of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum in excess of \$25,000 in the aggregate. If any sum borrowed by the Board of Directors pursuant to this subparagraph (p) is not repaid by the Association, an Owner who pays to the creditor such a percentage of such sum equal to such Owner's percentage interest in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against or which will affect such Owner's Unit. No action authorized in this paragraph will be taken without the prior written consent of Developer as long as Developer owns any Unit.

(s) Contracting for the management and maintenance of the Condominium and authorizing a managing agent to assist the Board of Directors in carrying out its powers and duties as the Board may deem appropriate under the circumstances; contracting for the management or operation of portions of the Condominium Property susceptible to separate management or operation; and granting concessions for the purpose of providing services to Owners. In exercising this power, the Association may contract with affiliates of itself and of Developer. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation or rules and execution of contracts on behalf of the Association.

(t) At its discretion, but in conformity with the Act, authorizing Owners or other Persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.

(u) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Act, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.

(v) Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units.

(w) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

(x) Executing all documents or consents, on behalf of all Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Owner by acceptance of a lien on said

Unit, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consent.

6. **Officers.**

6.1 **Executive Officers.** The executive officers of the Association shall be a President, a Vice President, a Treasurer, a Secretary and an Assistant Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors. All officers may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Owners.

6.2 **President.** The President shall be the chief executive officer of the Association with all of the powers and duties usually vested in the office of president of an association.

6.3 **Vice President.** The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as shall otherwise be prescribed by the Directors.

6.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members, shall attend to the giving of all notices to the Members and Directors and other notices required by law, shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.

6.5 **Assistant Secretary.** The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.

6.6 **Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. **Fiduciary Duty; Compensation.** The officers and Directors of the Association, as well as any manager employed by the Association, have a fiduciary relationship to Owners. No officer, Director or manager shall solicit, offer to accept, or accept any thing or service of value

for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer, director or manager who knowingly so solicits, offers to accept or accepts any thing or service of a value shall, in addition to all other rights and remedies of the Association and Owners, be subject to a civil penalty in accordance with the Act. Notwithstanding the foregoing, this Section shall not prohibit an officer, Director or manager from accepting services or items received in connection with trade fairs or education programs. Neither Directors, nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

8. **Resignations and Removals.** Any Director or officer may resign at any time by written resignation, delivered to the President or Secretary. Such resignation shall take effect upon receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such later date unless withdrawn prior to such date. The acceptance of a resignation shall not be required to make it effective. The conveyance of all interest in the Common Elements by any Director or officer who owned any interest at the time of appointment or election shall be deemed a written resignation of such Director or officer. No officer appointed by Developer can be removed except as provided in Section 4.16 and by law. An officer more than 90 days delinquent in the payment of regular Assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law. An officer charged with a felony theft or embezzlement offense involving the Association's funds or property shall be removed from office, creating a vacancy in the office to be filled according to law. If a person has any such criminal charge pending, he or she may not be appointed or elected to a position as an officer. However, should the charge be resolved without a finding of guilt, the person shall be reinstated for the remainder of his or her term of office, if any.

9. **Fiscal Management.** This Section shall supplement the provisions for fiscal management of the Association set forth in the Declaration and Articles:

9.1 **Budget.**

(a) **Adoption by Board; Items.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expenses and contain at least all items set forth in Section 718.504(21) of the Act, if applicable), and shall determine the amount of Assessments payable by Owners and allocate and assess expenses among Owners in accordance with these By-Laws and the Declaration. The adoption of a budget for the Condominium shall comply with the following requirements:

(i) **Notice of Meeting.** A copy of the proposed budget shall be mailed to each Owner not less than 14 days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting.

(ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against Owners in any year exceeding 115% of Assessments for the preceding year, upon written application of 10% of such Owners made within 21 days following adoption of such budget, a special meeting of Owners shall be held within 60 days of adoption of such budget by the Board of Directors. Each Owner shall be given at least 14 days' notice of said meeting. At the special meeting, Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than 50% of all the Units (including Units owned by Developer). If such a meeting of Owners has been called and a quorum is not obtained or a substitute budget has not been adopted by Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

(iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Owners in any year exceeding 115% of Assessments for the preceding year, there shall be excluded in the computations:

(A) any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association not anticipated to be incurred on a regular or annual basis, and

(B) Assessments for improvements to the Condominium Property.

(iv) Limitation on Assessments. As long as Developer is in control of the Board of Directors of the Association, such Board shall not impose an Assessment for a year greater than 115% of the prior year's Assessment, without approval of Owners owning a majority of the Units (including Units owned by Developer).

(b) Reserves. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount of reserves shall be computed by means of a formula based upon dividing estimated replacement cost of each reserve item by its estimated remaining useful life. The Association may adjust replacement and reserve Assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the Members of the Association have, by a majority vote at a duly called meeting of Members, determined for a specific fiscal year to provide no reserves or reserves less adequate than otherwise required. Prior to transfer of control of the Association to Owners other than Developer, Developer may vote to waive reserves or reduce the funding of reserves for the first two years of operation of the Association, beginning with the fiscal year in which the initial Declaration is recorded, with the vote taken each fiscal year and effective for only one annual budget, after which time, reserves may only be waived or reduced upon the vote of a majority of all non-Developer voting interests voting in person or by limited proxy at a duly called meeting of the Association. If a meeting of Owners has been called to determine to provide no reserves or reserves less adequate than are required, and such

result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Proposals relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.** Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures, unless their use for any other purposes is approved in advance by a vote of the majority of the Members, voting in person or by limited proxy, at a duly called meeting of the Association. Prior to transfer of control of the Association to Owners other than Developer, the Association shall not use reserves for purposes other than that for which they were intended without the approval of a majority of all non-Developer voting interests, voting in person or by limited proxy at a duly called meeting of the Association.

(c) **Adoption by Membership.** If the Board of Directors is unable to adopt a budget in accordance with the requirements of Section 9.1(a), it may call a special meeting of Owners for the purpose of considering and adopting such budget. Such meeting shall be called and held in the manner provided for such special meetings in said Section, or the Board may propose a budget in writing to the Members, and if such budget is adopted by such Members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

9.2 **Assessments.** Assessments against Owners for their share of the items of the budget shall be made for the applicable calendar year annually in advance on or before the 20th day of the month preceding the first day of the fiscal year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If an annual Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment, and installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment. In the event the annual Assessment proves to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors. Unpaid Assessments for the remaining portion of the calendar year for which an amended Assessment is made shall be payable in as many equal installments as there are full months (or quarters) of the calendar year remaining as of the date of such amended Assessment. Each such installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessment shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

9.3 **Attachment of Rents.** If a Unit is occupied by a tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the tenant pay the future monetary obligations related to the Unit to the Association, and the tenant must make such payment. The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the Unit. The Association

must mail written notice to the Owner of the Association's demand that the tenant make payments to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. A tenant who acts in good faith in response to a written demand from the Association is immune from any claim from the Owner. If the tenant prepaid rent to the Owner before receiving the demand from the Association and provides written evidence of paying the rent to the Association within 14 days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the Owner to the Association. The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the Owner. The Owner shall provide the tenant a credit against rents due to the Owner in the amount of moneys paid to the Association under this section. The Association may issue notices under Florida Statutes, Section 83.56 and may sue for eviction under Florida Statutes, Sections 83.59-83.625 as if the Association were a landlord under part II of Chapter 83, Florida Statutes if the tenant fails to pay a required payment to the Association. However, the Association is not otherwise considered a landlord under Chapter 83, Florida Statutes and specifically has no duties under Florida Statutes, Section 83.51. The tenant does not, by virtue of payment of monetary obligations to the Association, have any of the rights of an Owner to vote in any election or to examine the books and records of the Association. A court may supersede the effect of this subsection by appointing a receiver.

9.4 **Charges.** Charges by the Association against Members for other than Common Expenses shall be payable in advance. These charges may be collected as and when Assessments for Common Expenses are collected and, to the extent permitted by law, those charges shall be added to the Assessments for Common Expenses. Charges for other than Common Expenses may be made only after approval of a Member or when expressly provided for in the Declaration or its exhibits, as the same may be amended from time to time. Such charges may include, without limitation, charges for the use of the Condominium Property or recreation areas, maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner and surcharges, fines and damages and other sums due from such Owner.

9.5 **Special Assessments; Assessments for Emergencies.** Special Assessments shall be levied as provided in the Declaration and paid as the Board of Directors may require in the notice of such Assessments. The funds so collected shall be used only for the specific purpose or purposes set forth in the Assessment notice but, upon completion of such specific purpose or purposes, any excess funds may, at the discretion of the Board, either be returned to Owners or applied as a credit towards future Assessments. Special Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after 10 days' notice to Owners, and paid as the Board of Directors may require in the notice of Assessment.

9.6 **Depository.** The depository of the Association shall be such bank or banks in the County as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. Notwithstanding the foregoing, no working capital contribution shall be utilized for payment of Common Expenses during the period of any Developer guaranty. A separate reserve account shall be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes.

9.7 **Acceleration of Assessment Installments Upon Default.** If an Owner defaults in payment of an installment of an Assessment, the Board of Directors or its agent may accelerate the remaining installments of the Assessment for the current year upon 30 days' prior written notice to such Owner but such accelerated Assessments shall not be payable prior to the date a claim of lien is filed. The then unpaid balance of the Assessment shall be due upon the date stated in the notice, but not less than 5 days after delivery of the notice to Owner, or not less than 10 days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

9.8 **Fidelity Bonds.** Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds, including, without limitation, individuals authorized to sign checks and the President, Secretary and Treasurer, in such amount as shall be determined by a majority of the Board but no less than the maximum amount of funds that will be in the custody of the Association or the manager. The premiums on such bonds shall be paid by the Association as a Common Expense.

9.9 **Accounting Records and Reports.**

(a) The Association shall maintain accounting records in the County, according to good accounting practices used by similar associations. The records shall be open to inspection by Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (i) a record of all receipts and expenditures, and (ii) an account for each Unit designating the name and current mailing address of the Owner, the amount of each Assessment, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (i) above, in the form and manner specified below, shall be supplied to each Owner annually.

(b) Within 120 days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, to each Owner a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (i) Cost for security;
- (ii) Professional and management fees and expenses;
- (iii) Taxes;
- (iv) Cost for recreation facilities;
- (v) Expenses for refuse collection and utility services;
- (vi) Expenses for lawn care;
- (vii) Cost for building maintenance and repair;
- (viii) Insurance costs;
- (ix) Administrative and salary expenses; and
- (x) Reserves for capital expenditures, deferred maintenance and any other category for which the Association maintains a reserve account or accounts.

9.10 **Application of Payment**. All Assessment payments made by an Owner shall be applied as provided in these By-Laws, the Declaration or as determined by the Board.

9.11 **Notice of Meetings**. Notice of any meeting where Assessments against Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.

10. **Roster of Owners**. Each Owner shall file with the Association a copy of the deed or other document showing such Owner's ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes as provided above. Only Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

11. **Parliamentary Rules**. Except to the extent waived by the chairman of the meeting (either of Directors or Members), Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

12. **Amendments**. Except as otherwise provide in the Declaration, these By-Laws may be amended in the following manner:

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

12.2 **Adoption**. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third of the Members. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

(a) by not less than a majority of the votes of all Members represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or

(b) by not less than 80% of the votes of the Members represented at a meeting at which a quorum has been attained; or

(c) by not less than 100% of the entire Board of Directors except as otherwise provided by law.

12.3 **Rights of Developer and Mortgagees**. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to Developer or mortgagees of Units without the consent of Developer and such mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.

12.4 **Execution and Recording**. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County which contains on the first page an identification of the Official Records Book and page reference for the recording of the Declaration.

12.5 **Procedure**. The By-Laws shall not be revised or amended by reference to its title or number only. Proposals to amend the By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment, underlining and hyphens as indicative of words added or deleted shall not be used, but instead a notation shall be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Law. See By-Law....for present text." Nonmaterial errors or omissions in the By-Law process shall not invalidate an otherwise properly promulgated amendment.

13. **Rules and Regulations**. Schedule A to these By-Laws contains rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is transferred by Developer to Owners other than Developer, Owners of a

majority of the Units represented at a meeting at which a quorum is present may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Owner not less than 30 days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to Developer.

14. **Official Records.** From its inception, the Association shall maintain for the Condominium, a copy of each of the following, where applicable, which shall constitute the official records of the Association:

(a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.304(4) of the Act;

(b) A photocopy of the recorded Declaration of Condominium with all amendments;

(c) A photocopy of the recorded By-Laws of the Association with all amendments;

(d) A certified copy of the Articles with all amendments;

(e) A copy of the current Rules and Regulations of the Association;

(f) A book or books containing the minutes of all meetings of the Board of Directors and Owners, which minutes shall be retained for a period of at least seven years;

(g) A current roster of all Owners, their mailing addresses, Unit identifications, voting certifications, and, if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and the numbers designated by Owners for receiving notice sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and telephone numbers must be removed from Association records if consent to receive notice by electronic transmission is revoked.

(h) All current insurance policies of the Association and of the Condominium operated by the Association;

(i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or Owners have an obligation or responsibility;

(j) Bills of sale or transfer for all property owned by the Association;

(k) Accounting records for the Association and the accounting records for the Condominium. All accounting records shall be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys accounting records required to be created and maintained by these By-Laws and the Act during the period for which such records are required

to be maintained, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the Association or one or more of the Members, is personally subject to a civil penalty pursuant to Section. 718.501(1)(d) of the Act. The accounting records must include, but are not limited to:

- (i) Accurate, itemized, and detailed records for all receipts and expenditures.
- (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
- (iii) All audits, reviews, accounting statements, and financial reports of the Association or Condominium.
- (iv) All contracts for work to be performed, bids for work to be performed are also considered official records.
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections which shall be maintained for a period of 1 year from the date of the meeting to which the document relates;
- (m) All rental records if the Association is acting as agent for the rental of Units;
- (n) A copy of the current Question and Answer Sheet, in the form promulgated by the Division, updated annually;
- (o) All other records of the Association not specifically listed above which are related to the operation of the Association; and
- (p) A copy of the inspection report provided for under Section 718.301(4)(6) of the Act.

The official records of the Association must be maintained for at least seven years within the County, or, if in another county, then within 45 miles of the Condominium.

The official records of the Association shall be made available to any Owner for inspection within 5 working days after receipt of written request by the Board or its designee. The official records of the Association (i) shall be open to inspection by any Member or the authorized representative of such Member at all reasonable times and (ii) may be made available electronically by email or by website. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Member. The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying. The failure of the Association to provide official records within 10 working days after receipt of a written request creates a rebuttable presumption that the Association willfully failed to comply. An Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this

paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request. Failure to permit inspection of the official records as indicated entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the record who, directly or indirectly, knowingly denies access to the records. The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, Articles, By-Laws and rules and regulations, and all amendments to the foregoing, as well as the Question and Answer Sheet and the most current year-end financial statements, to ensure their availability to Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those persons requesting the documents. The Association is not responsible for the use or misuse of the information provided to a Member or his or her authorized representative pursuant to the compliance requirements of these By-Laws and the Act unless the Association has an affirmative duty not to disclose such information pursuant to these By-Laws and the Act.

15. Restricted Records. Notwithstanding the provisions of Section 14, the following records are not accessible to Unit Owners:

(a) Any records protected by the (i) lawyer-client privilege as described in Florida Statutes, Section 90.502; or (ii) work-product privilege. Privileged material includes any record prepared by any 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;

(b) Information obtained by the Association in connection with the approval of any lease, sale, or other transfer of a Unit;

(c) Personnel records of Association employees, including, but not limited to, disciplinary, payroll, health, and insurance records;

(d) Medical records of Owners;

(e) Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any addresses of an Owner other than as provided to fulfill the Association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, and property address;

(f) Any electronic security measure that is used by the Association to safeguard data, including passwords; and

(g) The software and operating system used by the Association which allows manipulation of data, even if the Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

16. **Certificate of Compliance.** A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Units to the applicable Condominium fire and life safety code.

17. **Disputes.** To the extent required by law, any disputes among Owners or among the Board of Directors and Owners or among any other parties involved in the operation of the Condominium shall be resolved by non-binding arbitration in accordance with the rules of the Division.

18. **Construction.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular.

19. **Captions.** The captions are inserted only as a matter of convenience and for reference and in no way define or limit the scope of these By-Laws of the intent or any provision.

SCHEDULE A
TO
AMENDED AND RESTATED BY-LAWS

RULES AND REGULATIONS

FOR

OPUS CONDOMINIUM

1. The sidewalks, entrances, passages, vestibules, patios, courts, lobbies, halls and like portions of the Common Elements shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Condominium Property; carts, bicycles, carriages, chairs, tables or any other similar objects shall not be stored on the Common Elements.
2. The personal property of Owners must be stored in their respective Units.
3. No garbage cans, supplies, milk bottles or other articles shall be placed on the balconies, landings or other Common Elements. No linens, cloths, clothing, curtains, rugs, mops or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, fences, balconies, terraces or other portions of the Condominium Property.
4. No Owner shall permit anything to fall from a window or door of the Condominium Property, nor sweep or throw from the Condominium Property any dirt or other substance into any of the balconies or elsewhere in the Building or upon the Common Elements.
5. All refuse must be deposited with all other refuse in areas designated for such purpose by the Board.
6. Parking areas are solely for non-commercial automobiles with a current passenger vehicle registration. Unauthorized parking includes vehicles parked so as to impede ingress to or egress from other parking spaces, drives, driveways, or roads. Unauthorized parking shall be grounds for removal of the vehicle by the Association at the expense of the vehicle owner and/or operator. No vehicle of any kind shall be parked at any time on the Condominium Property except in designated parking places. The Association is not responsible for any injury to or loss from cars parked on the Condominium Property.
7. The Board of Directors shall be solely responsible for directing and supervising employees of the Association and any management companies.
8. No vehicle which cannot operate on its own power shall remain on the Condominium Property for more than 24 hours, and no major repair of vehicles shall be made on the Condominium Property.
9. No Owner or any of Owner's family employees, agents, tenants, visitors or licensees, shall make or permit any disturbing noises in the Building, nor permit any conduct by such Persons that will interfere with the rights, comforts or conveniences of other Owners. No Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a

phonograph, television, radio or sound amplifier in his or her Unit in such a manner as to disturb or annoy other residents. No Owner shall conduct, nor permit to be conducted, vocal or instrumental instruction at any time which disturbs other residents.

10. No electronic installation may be permitted in any Unit which interferes with the television or radio reception of another Unit.

11. The Association may retain a pass key to all Units. No Owner shall alter any lock nor install a new lock without the prior written consent of the Board of Directors. Where such consent is given, the Owner shall provide the Association with an additional key. The Association and its agents shall have access to all Units for the purposes described in the Declaration. Except in cases of emergency, the Association will attempt to notify each Owner in advance of any entry to a Unit.

12. Owners shall not be permitted to store any items whatsoever on balconies, patios or terraces. Further, no grilling shall be permitted on any balcony, patio or terrace. Barbecuing shall be permitted only in designated areas.

13. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Unit or on the Common Elements, except for use in barbecuing.

14. A Owner who plans to leave any Unit vacant during the hurricane season must prepare his or her Unit prior to his or her departure by designating in writing to the Association a responsible firm or individual to care for such Owner's Unit should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.

15. All pets must be walked on a leash.

16. No awning, canopy, or shutter, including a hurricane or storm shutter, shall be attached or affixed to the exterior of the Unit unless such awning, canopy or shutter has been approved by the Association. The Associations will establish the type and color of permitted shutters which will be the same for each Unit. Hurricane shutters approved by the Association may only be installed and remain in place during a hurricane or hurricane watch or warning. Such shutters must be removed by the Owner within 48 hours thereafter; if not so removed, they may be removed by the Board at the expense of such Owner.

17. Governmental requirements from time to time for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

18. No window air-conditioning units may be installed by Owners. No Unit shall have any aluminum foil placed in any window or glass door or any reflective substance placed on any glass except as approved by the Board for energy conservation purposes. Curtains, blinds and drapes (including their linings) which face on exterior windows or glass doors of Units shall be subject to the Board's disapproval, and, if disapproved, shall be removed and replaced with acceptable items.

19. Except as specifically permitted by law, no exterior antennae, aerial, satellite dish or other installation shall be permitted on the Condominium Property or Improvements provided that Developer shall have the right to install and maintain community antennae, satellite dishes and radio and television lines and other temporary communications systems.
20. No smoking shall be permitted anywhere in the Common Elements inside the Building.
21. All persons using any pool shall do so at their own risk. All children under 12 years of age must be accompanied by a responsible adult. Bathers are required to wear footwear and cover over their bathing suits in the Building. Glasses and other breakable objects may not be utilized in the pool or on the pool deck. Pets are not permitted in the pool or pool area under any circumstances. Children in diapers are not allowed in the pool.
22. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Condominium Property and including full compliance by them with these Rules and Regulations and all other rules and regulations of the Association. Playing shall not be permitted in any of the lobbies, hallways, stairways, elevators and lobby areas, and loud noises will not be tolerated.
23. Plants, pots, receptacles and other movable objects must not be kept, placed or maintained on balcony ledges. No objects shall be hung from balconies or window sills. No cloth, clothing, rugs or mops shall be hung upon, or shaken from, windows, doors, balconies or terraces. Owners shall remove all loose objects and movable objects, including furniture, from the balconies if they will not be in residence during the hurricane season. No furniture which extends higher than the rail or railing on such balcony, or which may be visible from outside the Condominium, including, without limitation, umbrellas or tables, shall be kept or placed on any balcony. Reference to balconies shall include patios, terraces and roof areas.
24. Water closets and other plumbing shall not be used for any purposes other than those for which they are constructed. No sweepings, rubbish, rags or foreign substances shall be thrown in them. The cost of any damage resulting from misuse shall be borne by the Owner responsible for the damage.
25. All deliveries shall be made through designated entrances.
26. No noxious or unusual odors shall be generated in such quantities that they permeate to other Units or the Common Elements and become annoyances or become obnoxious to other Owners. Normal cooking odors, normally and reasonably generated, shall not be deemed violations of this regulation.
27. Goods and packages of every kind must be delivered to the receiving room in the Building. The Association shall not be responsible for the loss of, or damage to, any such property, even though such loss or damage may occur through the carelessness or negligence of the employees of the Building.
28. Owners, their families and guests, shall not appear in, nor use, the lobby, lounge or card rooms except in appropriate attire.

29. Members are not permitted on the roof for any purpose, except as permitted specifically by the Declaration.
30. There shall be no solicitation by any person anywhere in the Building for any cause, charity or any purpose whatever, unless specifically authorized by the Board of Directors.
31. Service people are required to check in and check out with the security guard.
32. All contractors and/or technicians performing work for an Owner within the Unit, Building, or Condominium shall be referred to the Association for approval before performing such work. This shall apply to all work including, but not limited to, installation of telephones, telegraph equipment, electrical devices and attachments, and all installations affecting floors, walls, windows, doors, ceiling, equipment or any other physical feature of the Building, the Unit or the Condominium.
33. Members are asked not to use fire doors for ingress and egress.
34. The Common Elements are for the exclusive use of the Owners and lessees of the Units and their immediate families, resident house guests and guests accompanied by an Owner or lessee, in accordance with the terms and conditions of the Declaration. No other person shall be permitted to use the Common Elements of the Condominium unless accompanied by an Owner or a member of his immediate family or lessee of a Unit, without the prior written consent of the Association.
35. There shall be no marking, marring, damaging, destroying or defacing of any part of the Condominium Property. Members shall be held responsible for, and shall bear any expense of, such damage caused by such member, or such member's family, guests, lessees and/or invitees.
36. Owners shall be responsible for, and shall bear any expense of, any damage to the Common Elements caused by moving to or removing from their Unit household furnishings or other objects, or caused by any other deliveries to or from Units by their invitees.
37. Every Owner, lessee and occupant shall comply with these Rules and Regulations, and any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation, as amended from time to time. Failure of an Owner or occupant to so comply shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination. In addition to all other remedies, in the sole discretion of the Board of Directors, a fine or fines may be imposed upon an Owner for failure of an Owner, such Owner's family, guests, invitees or employees, to comply with any of these rules and regulations, the Declaration, or By-Laws, provided the following procedures are adhered to:

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

- (i) a statement of the date, time and place of the hearing;

(ii) a statement of the provisions of the Declaration, By-Laws, or rules which have allegedly been violated; and

(iii) a short and plain statement of the matters asserted by the Association.

(b) Hearing: The non-compliance shall be presented to a committee of other Owners, who shall hear reasons why penalties should not be imposed. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the committee. A written decision of the committee shall be submitted to the Owner or occupant by not later than 21 days after the meeting.

(c) Fines: The Board of Directors may impose fines against the applicable Unit up to the maximum amount permitted by law from time to time.

(d) Violations: Each separate incident which is grounds for a fine shall be the basis of one separate fine. In the case of continuing violations, each continuation of same after a notice thereof is given shall be deemed a separate incident.

(e) Payment of Penalties: Fines shall be paid not later than 30 days after notice of the imposition or levy of the penalties.

(f) Application of Penalties: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-Exclusive Remedy: These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

38. These Rules and Regulations shall not apply to Developer, nor its agents or employees and contractors, or to any Institutional Mortgagee, nor to the Units owned by either Developer or such Mortgagee. All of these rules and regulations shall apply, however, to all other Owners, lessees and occupants even if not specifically so stated.

39. The Board of Directors shall be permitted (but not required) to grant relief to one or more Owners from specific rules and regulations upon written request and good cause shown in the sole opinion of the Board.