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DECLARATION OF CONDOMINIUM

OF

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BRIGHTON AT BAY COLONY, A CONDOMINIUM

NAPLES, FLORIDA

MCN COMMUNITIES, INC., herein called "Developer", on behalf of itself, its successors, grantees and assigns, hereby makes this Declaration of Condominium:

1. **SUBMISSION TO CONDOMINIUM** - The fee simple title to the lands located in Collier County, Florida and described in attached Exhibit "E" are submitted to the condominium form of ownership.

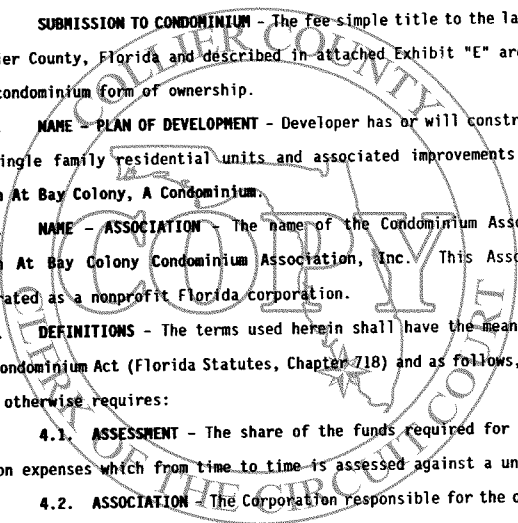
2. **NAME - PLAN OF DEVELOPMENT** - Developer has or will construct a total of 75 single family residential units and associated improvements designated Brighton At Bay Colony, A Condominium.

3. **NAME - ASSOCIATION** - The name of the Condominium Association is Brighton At Bay Colony Condominium Association, Inc. This Association is incorporated as a nonprofit Florida corporation.

4. **DEFINITIONS** - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) and as follows, unless the context otherwise requires:

4.1. **ASSESSMENT** - The share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner.

4.2. **ASSOCIATION** - The Corporation responsible for the operation of the condominium.



4.3. **ASSOCIATION PROPERTY** - All property, real or personal, owned by the Association.

4.4. **BAY COLONY** - A certain real property area within the Northwest part of Pelican Bay described in the Amended and Restated Declaration and General Protective Covenants for Bay Colony recorded in O. R. Book 1461, Page 1048, Public Records of Collier County, Florida, and amendments thereto.

4.5. **BAY COLONY BEACH CLUB** - The Gulf-front pool and dining facility in which membership is mandatory for Bay Colony residents pursuant to the Amended and Restated Declaration and General Protective Covenants for Bay Colony.

4.6. **BOARD OF DIRECTORS OR DIRECTORS OR BOARD** - The Board of Directors responsible for the administration of the Association.

4.7. **CHARGE OR SPECIAL CHARGE** - The obligation of a unit owner to pay or reimburse money to the Association which cannot be secured as an assessment pursuant to F.S. 718.116, but which shall give rise to a cause of action against the unit owner pursuant to this Declaration.

4.8. **COMMON ELEMENTS** - The portions of the property submitted to condominium ownership and not included in the units as defined in Florida Statute 718.108, including:

4.8.1. The land.

4.8.2. All parts of the improvements which are not included within the units.

4.8.3. Easements.

4.8.4. Installations for the furnishing of services to more than one unit or to the common elements, such as chilled water air conditioning, electricity, water and sewer.

4.9. **COMMON EXPENSES** - All expenses and assessments properly incurred by the Association for the condominium and such expenses as may be

declared to be common expenses by this Declaration. The cost of providing cable television under a bulk service contract shall be a common expense.

4.10. **COMMON SURPLUS** - The excess of all receipts of the Association over the common expenses.

4.11. **CONDOMINIUM DOCUMENTS** - This Declaration and its attached exhibits which set forth the nature of the property rights in the condominium and the covenants running with the land which govern these rights. All the condominium documents shall be subject to the provisions of the Declaration and their order of precedence shall be as follows: (1) Declaration; (2) Association Articles of Incorporation; (3) Bylaws; (4) Rules and Regulations.

4.12. **CONDOMINIUM PARCEL** - A unit together with the undivided share in the common elements which is appurtenant to the unit.

4.13. **CONDOMINIUM PROPERTY** - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

4.14. **DEVELOPER** - WESTINGHOUSE COMMUNITIES OF NAPLES, INC., the company which has established this condominium, and the successors and assigns of its development rights.

4.15. **EXHIBITS:**

- A. The Association Articles of Incorporation.
- B. The Condominium Plot Plan.
- C. The Association By-laws.
- D. The Rules and Regulations.
- E. The legal description of the condominium property.
- F. The percentages of ownership of the common elements.

4.16. **FAMILY** - means one natural person or a group of two or more natural persons each of whom is related to each of the others by blood, marriage or adoption (exclusive of household servants); or not more than two persons not so related, who reside together as a single no-profit housekeeping unit.

4.17. **GUEST** - means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

4.18. **INSTITUTIONAL FIRST MORTGAGEE** - means the mortgagee (or its assignee) of a first mortgage upon a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage banker, life insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, any agency of the United States of America and the Developer. The term also refers to any holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4.19. **ISLAND NEIGHBORHOOD** - A portion of the Bay Colony area and within which Brighton is located and which has been identified for administrative purposes as an enhanced services area.

4.20. **LEASE** - means the grant by a unit owner of a temporary right of use of the owner's unit for a valuable consideration.

4.21. **LIMITED COMMON ELEMENTS** - Those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.22. **OCCUPANT or OCCUPY** - when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.23. **OPERATION** - The administration and management of the condominium property.

4.24. **PELICAN BAY** - The lands in Collier County, Florida within the general boundary of U. S. Highway 41 on the East, Vanderbilt Beach Road to the North, the Gulf of Mexico on the West, and Seagate Drive on the South, and such other lands as may be, from time to time, added to or subtracted from such lands.

4.25. **PERSON** - An individual, corporation, trust or other legal entity capable of holding title to real property.

4.26. **SINGULAR, PLURAL, GENDER** - Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and use of any gender shall be deemed to include all genders.

4.27. **UNIT** - A part of the condominium property which is subject to exclusive ownership as described in this Declaration.

4.28. **UNIT NUMBER** - The letter, number or combination thereof which is designated upon the Condominium Plot Plan and which is used as the identification of a unit.

4.29. **UNIT OWNER** - The owner of a condominium parcel.

4.30. **VOTING INTEREST** - means the voting rights distributed to the Association members pursuant to F.S. 718.106(4)(f).

5. **CONDOMINIUM UNITS, BOUNDARIES AND APPURTENANCES** - Units shall be constituted as follows:

5.1. **REAL PROPERTY** - Each unit and all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the condominium property, subject only to the provisions of the Condominium Documents and applicable laws.

5.2. **BOUNDARIES** - Each unit shall be bounded as to both horizontal and perimetrical boundaries as below defined, whether they exist now or are created by construction, settlement or movement of the buildings, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

5.3. **HORIZONTAL BOUNDARIES** - The upper and lower boundaries of the units shall be:

5.4. **UPPER BOUNDARY** - The planes of the underside of the finished undecorated ceilings of the unit, extended to meet the perimetrical boundaries.

5.5. **LOWER BOUNDARY** - The planes of the upperside of the finished undecorated surface of the floors of the unit, extended to meet the perimetrical boundaries.

5.6. **PERIMETRICAL BOUNDARIES** - The perimetrical boundaries shall be the finished undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan and the planes of the interior surfaces of the unit's windows, doors and other openings that abut the exterior of the building or common elements including Limited Common Elements.

5.7. **EXCLUSIVE USE** - Each unit owner shall have the exclusive use of such owner's unit.

5.8. **OWNERSHIP** - The ownership of each unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of a unit owner in the condominium property which shall include, but not be limited to:

5.8.1. **COMMON ELEMENTS** - An undivided share of the common elements.

5.8.2. **LIMITED COMMON ELEMENTS** - The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist: Garage parking space(s), storage locker, screened terrace(s), open terrace(s), deck(s), rooftop unit amenities, private stairway(s), cabanas, mechanical rooms serving only one unit and those items set forth in Section 6.2.1. exterior to a unit to be maintained by a unit owner.

5.9. **ASSOCIATION MEMBERSHIP** and an undivided share in the common surplus of the Association.

5.10. **EASEMENT TO AIR SPACE** - An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

5.11. **EASEMENTS** - The following non-exclusive easements from the Developer to (as applicable) each unit owner, to the Association, the Bay Colony Community Association, Inc., the Pelican Bay of Naples Foundation, Inc. and the Pelican Bay Services Division of the Collier County Water-Sewer District and their employees, agents and hired contractors, to utility companies, unit owners'

families in residence, guests, invitees and to governmental and emergency services, are hereby granted and created:

5.11.1. **INGRESS AND EGRESS** - Easements over the common elements for ingress and egress to units and public ways.

5.11.2. **MAINTENANCE, REPAIR AND REPLACEMENT** - Easements through the units and common elements for maintenance, repair and replacements.

5.11.3. **UTILITIES** - Easements through the common elements and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services and utilities to other units and the common elements and other utility customers both existing and future.

5.11.4. **PUBLIC SERVICES** - Access to the condominium property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

5.11.5. **DUNE WALKOVER** - An easement to construct, use, operate and maintain a dune walkover structure and walkway from the condominium property to the beach of the Gulf of Mexico.

6. **MAINTENANCE RESPONSIBILITY** - The responsibility for maintenance of the condominium shall be as follows:

6.1. **BY THE ASSOCIATION** - The Association shall maintain, repair and replace at the Association's expense the common elements and:

6.1.1. **STRUCTURAL** - Those portions of the unit which contribute to the support of the building including, but not limited to, the perimeter walls, columns, roof and floors. Also, wiring, piping, ductwork and other mechanical, electrical or other installations or equipment serving the common elements or more than one unit.

6.1.2. **NEGLIGENCE** - Provided that if the maintenance and repair and replacement of any of the common elements, the items in 6.1.1. above or other units shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees and guests, it shall be a liability of the unit owner. Such work may be done by the Association at the expense of the unit owner, and the cost shall be secured as a charge.

6.1.3. **DAMAGE** - All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association.

6.2. **BY THE UNIT OWNER** - The responsibility of the unit owner shall be as follows:

6.2.1. **SPECIFIC ITEMS** - To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The unit owner's responsibility specifically includes windows and glass panels, hurricane shutters, doors except exterior surface paint or stain, screens, frames, hardware, appliances, fixtures, cabinets, switches, air handlers, wiring, piping, ductwork and plumbing serving only the particular unit, whether located inside or outside the unit. The unit owner's responsibility also includes the interiors of the cabanas and storage lockers together with any of the listed items that apply to these facilities. Unit owners are also responsible for maintaining the porches, balconies, terraces and other limited common elements appurtenant to their unit but excluding parking spaces, exterior painting and any structural work.

6.2.2. **EXTERIOR APPEARANCE** - A unit owner shall not paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the unit or which is visible from the

exterior of the unit, unless the written consent of the Association is obtained in advance. (This shall not be construed to require approval for placing appropriate furniture on terraces or decks, but does include blinds or shutters including but not limited to hurricane shutters of all types other than those installed by the Developer as part of the construction of the condominium.) Unless otherwise approved, curtains, blinds and drapes shall be white or off-white in color or lined with materials of these colors.

6.2.3. **NO ALTERATION OF COMMON ELEMENTS** - No owner shall make any alterations in the portions of the improvements which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do any work which would jeopardize the safety or soundness of the building or impair any easements, provided that two units within the same ownership and adjacent, either horizontally or vertically, may be connected by doorways or stairways through common elements walls or floors, provided that approval in writing is obtained in advance from the Association and that all applicable government agencies approve and grant permits and that the entire expense including subsequent maintenance and restoration is borne by such owner. The Association may require approval from engineers or other professionals as a prerequisite.

6.3. **TINTED EXTERIOR GLASS, SEA TURTLE PROTECTION** - The Florida Department of Natural Resources (DNR) has established requirements on limiting light transmittance from within buildings for the protection of sea turtles on Gulf beaches. For this reason, special shaded or tinted glass has been used in constructing Brighton. Any replacement glass installed by the Association or by Unit owners must be of the same shaded or tinted type that has DNR approval.

7. **COMMON ELEMENTS**

7.1. **COMMON ELEMENTS** - The common elements shall be owned by the unit owners in such undivided shares as are set forth in Exhibit "F". Such undivided shares are stated as percentages and are based on the total square footage of each residential unit in uniform relationship to the total square footage of all of the residential units in the condominium.

7.2. **NO PARTITION** - No action for partition of the common elements shall lie.

7.3. **USE** - Each unit owner and the Association shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other unit owners.

7.4. **MATERIAL ALTERATIONS AND ADDITIONS** - Except for changes made by an owner with Association approval per 6.2.2. or 6.2.3. or by the Board of Directors alone, for the integrity of the condominium property or those resulting from a merger (which shall be controlled by Paragraph 15.4 of this Declaration), material alteration or substantial additions to the common elements or to Association property including the purchase, acquisition, sale, conveyance or mortgaging of such property may be effectuated only by vote of 67% of the voting interests of the condominium at a meeting called for the purpose. The Board of Directors may lease or grant easements or licenses for the use of common elements or Association property if it will benefit the members of the Association. The Association is also authorized to enter into agreements, to acquire leaseholds, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas and other facilities whether or not contiguous to the lands of the condominium if they are intended

to provide enjoyment, recreation or other use or benefit to the unit owners.

8. **FISCAL MANAGEMENT** - The fiscal management of the condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the By-Laws (Exhibit C).

9. **ADMINISTRATION** - The administration of the condominium shall be by the Board of Directors and its powers and duties shall be as set forth herein and in the By-Laws.

10. **INSURANCE** - In order to adequately protect the unit owners, the Association, the condominium property and the Association property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

10.1. **DUTY AND AUTHORITY TO OBTAIN** - The Board of Directors shall use its best efforts to obtain and maintain adequate insurance. In all insurance purchased by the Association, the name of the insured shall be the Association and the unit owners and their mortgagees (without naming them), as their interests shall appear and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages. In the event that the Bay Colony Community Association, Inc. requests the Association to name it as an insured as its interests shall appear, the Association shall do so.

10.2. **BASIC INSURANCE** - Insurance covering all of the buildings and improvements as well as all Association property, in an amount determined annually by the Board of Directors, such insurance to afford the following protection:

10.2.1. **PROPERTY** - Replacement cost coverage for loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

10.2.2. **FLOOD** - Up to the replacement cost for each building and insurable improvements as available through the National Flood Insurance Program.

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

10.2.4. **AUTOMOBILE** - Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles in such limits of protection and with such coverage as may be required by the Board of Directors of the Association.

10.2.5. **WORKERS' COMPENSATION** - Regardless of the number of employees, the Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.

10.2.6. **FIDELITY BONDING** - The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount not less than \$50,000.00 for each such person, but in no event less than the minimum required by the Condominium Act from time to time. The Association shall bear the cost of bonding.

10.2.7. **DIRECTORS AND OFFICERS LIABILITY INSURANCE** - The Association shall obtain and maintain adequate Directors and officers liability insurance utilizing the broad form of policy coverage for all Directors and officers and, if available, committee members of the Association.

10.2.8. **OPTIONAL COVERAGE** - The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and unit owners.

10.3. **DESCRIPTION OF COVERAGE** - A detailed summary of the coverage included in the master policies shall be available for inspection by unit owners upon request.

10.4. **WAIVER OF SUBROGATION** - If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its rights to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests.

10.5. **SHARES OF INSURANCE PROCEEDS** - All proceeds of insurance policies purchased by the Association shall be payable to the Association. The duty of the Association shall be to receive such proceeds and hold and disburse them for the purposes stated herein in the following shares:

10.5.1. **COMMON ELEMENTS** - Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

10.5.2. **UNITS** - Proceeds on account of damage to units shall be held in as many undivided shares as there are damaged units, the share of each owner being in proportion to the cost of restoring the damage suffered by each such unit.

10.5.3. **MORTGAGEES** - If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts.

10.6. **DISTRIBUTION OF INSURANCE PROCEEDS** - Proceeds of insurance policies received by the Association shall be distributed for the benefit of the unit owners in the following manner:

10.6.1. **COST OF RECONSTRUCTION OR REPAIR** - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the Association.

10.6.2. **FAILURE TO RECONSTRUCT OR REPAIR** - If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds after expenses shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

10.7. **ASSOCIATION AS AGENT** - The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

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

11.1. **DAMAGE TO UNITS** - Where loss or damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to such contractors, suppliers and personnel for work done, materials supplied or services required for reconstruction or repair. Payments shall be in such amounts and at such times as the unit owners may direct. The owners of damaged units shall be responsible for reconstruction and repair and shall bear the cost thereof, if any, in excess of the insurance proceeds.

11.2. **DAMAGE TO COMMON ELEMENTS - LESS THAN "VERY SUBSTANTIAL"** - Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

11.2.1. **ESTIMATES** - The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of reconstruction and repair, and shall negotiate and contract for the work.

11.2.2. **INSURANCE INSUFFICIENT** - If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the unit owners. The

special assessments shall be added to the proceeds available for reconstruction and repair of the property.

11.2.3. **"VERY SUBSTANTIAL" DAMAGE** - As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur, then:

11.2.3.1. **OWNERS' MEETING** - A meeting of the Association shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to reconstruction or termination of the condominium, subject to the following:

11.2.3.1.1. **INSURANCE SUFFICIENT** - If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the condominium shall be terminated pursuant to Paragraph 16.2.

11.2.3.1.2. **INSURANCE INSUFFICIENT** - If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless 67% of the voting interests of the Association vote in favor of such special assessment and against termination of the condominium, it shall be terminated pursuant to Paragraph 16.2. If 67% of the voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for

such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.

11.2.4. **DISPUTES** - If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

11.3. **APPLICATION OF INSURANCE PROCEEDS** - It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the insurance proceeds and they shall first be applied to reconstruction of the common elements and Association property and then to the units; if there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be distributed to the Association. Provided, however, if special assessments were made pursuant to Paragraph 11.2.3.1.2. hereof, then all or a part of such balance shall be returned to the unit owners paying said assessments pro-rata, according to the amount each paid, up to the full amount each paid, then to the Association.

11.4. **EQUITABLE RELIEF** - In the event of substantial damage to the condominium property, and if the property is not reconstructed or repaired within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction and is completed within a reasonable time thereafter.

11.5. **PLANS AND SPECIFICATIONS** - Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the

original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors and by the owners of 67% of the voting interests of the Association and the Design Review Committees of the Bay Colony Community Association.

12. USE RESTRICTIONS - The use of the property of the condominium shall be in accordance with the Rules and Regulations attached hereto and incorporated herein as Exhibit "D" and the following provisions:

12.1. LAWFUL USE - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon condominium property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.

12.2. RULES AND REGULATIONS - The rules and regulations attached hereto as Exhibit "D" and made a part hereof by reference concerning the use of the condominium property including the units may be amended from time to time by the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all unit owners. No new or amended regulation may be enforced prior to distribution to the owners. Changes in the Rules and Regulations shall not require amendment of this Declaration and may, but need not, be recorded in the Public Records.

12.3. USE OF THE UNITS is restricted to single family residential purposes only. These use restrictions shall not be construed in such a manner as to prohibit a unit owner from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from

his unit. Such uses are expressly declared customarily incident to the principal residential use. All guests must be registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities.

12.4. **ASSOCIATION'S ACCESS TO UNITS** - The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The Association's right of access to a unit shall be exercised after reasonable notice to the unit owners, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, as well as with reasonable precautions to protect the personal property within the unit. The Association requires and shall retain a pass-key to all units. No unit owner shall alter any lock, nor install a new lock, to prevent access when the unit is unoccupied, unless the unit owner provides the Association with a key.

12.5. **PARKING** - Each unit shall have two allocated parking spaces in the garage. Allocations will be made initially by the Developer by an unrecorded written instrument given the Purchaser at closing. Later, in the event that two or more unit owners wish to exchange a space or spaces, they may do so by surrendering their allocation instruments to the Secretary of the Association who shall re-issue allocation instruments above his signature, reflecting the exchange; provided that each unit shall at all times have no less than two spaces. The Developer reserves the right to allocate additional

enclosed spaces in its discretion for a valuable consideration and which spaces may later be assigned by the holder of the allocation to another unit owner for a valuable consideration. Allocations may only be changed with the written consent of the holder provided, however, that the Association shall have the absolute right to make allocations or re-allocations of spaces in the garage to accommodate the needs of handicapped persons. Allocated spaces while allocated shall constitute Limited Common Elements appurtenant to units. No non-unit owner shall hold a parking space allocation and allocated spaces shall pass with the title to the unit.

12.6. CABANAS - Cabanas are Limited Common Elements appurtenant to the unit to which they are assigned and are for the exclusive use of the owners of that unit. No cabana may be owned except as an appurtenance to a unit. The assignment shall be made initially by the Developer and evidenced by reference to the cabana in the deed to the unit. The Developer may make the assignment for a valuable consideration. Subsequent assignments shall be evidenced by: (1) reference in the deed to the unit to which such cabana is appurtenant or, if such cabana is being assigned to another unit owner without commensurate sale of the unit, then by assignment in recordable form, and (2) delivery to the Secretary of the Association of a copy of such deed or assignment, as the case may be, who shall maintain a written record of cabana ownership and encumbrance. The owner or owners of a unit are collectively permitted to hold assignments to a maximum of one interior and one exterior cabana or two adjoining interior or exterior cabanas which have been combined, per unit owned. The cabanas shall not be used as overnight sleeping accommodations. The cabanas shall be maintained by the Association, but the expenses of the electricity, maintenance and repair of the cabanas shall be paid by the holders of the cabanas in equal shares as limited common expenses.

12.7. **PETS - TENANTS AND GUESTS** - Pets shall be as allowed and regulated in the Rules and Regulations (Exhibit "D") but tenants and guests shall not be permitted to have pets.

12.8. **FLOORING** - Except with respect to improvements put in place as of the date of the recording of this Declaration by the Developer, each unit owner who shall elect to install in any portion of his unit (other than in bath and powder rooms) hard surface floor covering (i.e., tile, slate, ceramic, parquet, etc.) shall be first required to install a sound absorbent undercushion of such kind and quality at least equivalent to 1/4 inch of cork so as to prevent the transmission of noise to adjoining units, and shall obtain written approval of the Directors prior to making such installation. If such prior approval is not obtained, the Directors may, in addition to exercising all the other remedies provided for in this Declaration for breach of any of the provisions hereof, require such unit owner to cover all non-conforming work with carpeting underlain with carpet padding, or may require removal of such non-conforming work, at the expense of the offending unit owner.

12.8.1 **STRUCTURAL INTEGRITY OF BALCONIES AND TERRACES** -

The structural integrity of balconies and terraces constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor-outdoor carpet and unglazed ceramic tile and its grout. For this reason no indoor-outdoor carpet may be used on balconies and terraces, and all tile and its bedding and grout must be of such materials and so applied as to be waterproof. Any flooring installed on the non-screened balconies or terraces of a unit shall not extend beyond the vertical plane of the interior edge of the glass guardrails.

12.9. **EXCLUSIVE USE - COMMON FACILITIES** - The Association may lease to unit owners for appropriate temporary periods of time those portions of the common areas rationally appropriate and desirable for exclusive use for private functions. For example, but not by way of limitation, the pool deck, social rooms and card rooms. The guest suites on the amenities level may be reserved for occupancy by owners' guests while the owners are in residence.

12.10. **NUISANCES PROHIBITED** - Unit owners and their tenants and invitees shall not engage in any practice, exhibit any behavior nor permit any condition to exist that shall constitute a nuisance.

13. **LEASE, CONVEYANCE, DISPOSITION, FINANCING** - The purpose and object of this Section is to maintain a quiet, tranquil, non-transient and single family oriented atmosphere with the residents living in compatible coexistence with other financially responsible persons who are of like mind and acceptable both in character and comportment. This objective is considered to be both important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, the lease, conveyance, disposal and financing of the units by owners (subject to the exceptions provided in Section 18.1) shall be subject to the following provisions:

13.1. **ASSOCIATION APPROVAL REQUIRED** - Except for Developer sales no owner may sell, lease, give or dispose of a unit or any interest therein in any manner without the written approval of the Association. The approval shall be a written instrument in recordable form which shall include, without limitation, the nature of the transaction (sale, lease, etc.), the parties to the transaction (sellers, purchasers, etc.), the unit number, the name of the condominium and the Official Record Book (O. R. Book) and Page numbers in which

this Declaration was originally recorded. For all unit transfers of title other than from the Developer, the approval must be recorded in the Collier County, Florida Public Records simultaneously with the Deed or other instrument transferring title to the unit. Approvals of leases need not be recorded. Only entire units may be leased. All leases must and shall be deemed to contain the agreement of the lessee(s) to abide by all of the covenants of the condominium and Community Associations' documents and must and shall be deemed to provide that a violation of the documents is a breach and event of default of the lease and grounds for damages, termination and eviction and that the lessee and the owner agree that the Association may proceed directly against such lessee(s) and that the lessee(s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee(s), the Unit Owner shall pay them and such funds shall be secured as a charge. Each Unit Owner by acceptance of the deed to a unit and by the terms of this declaration appoints the Association as owner's agent to bring actions in owner's name and at owner's expense including injunction, damages, termination and eviction. The rules and regulations must be provided to the lessee(s) by or on the behalf of the unit owner at or before the commencement of the lease term. The minimum leasing period is 30 days and no unit may be leased more than two (2) times per calendar year;

13.2. MORTGAGE APPROVAL - No owner other than the Developer may mortgage or finance his unit in any manner without the written approval of the Association except to an institutional mortgagee as defined in Paragraph 4.22, provided that a unit owner who sells his unit needs no approval to take back a purchase money mortgage;

13.3. APPROVAL PROCEDURE - The approval of the Association shall be obtained as follows:

13.3.1. WRITTEN NOTICE - Written notice shall be given the Association by the owner of his intention to sell, transfer in any fashion or encumber his interest. The notice shall include the name and address of the proposed acquirer or lender and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a transfer fee not to exceed \$100.00 or as permitted by law from time to time. The Association shall not approve any sale, transfer or lease until such time as all unpaid assessments and all court costs and attorneys fees (if any) incurred by the Association and due and owing for the unit have been paid;

13.3.2. SALE - The Association must, within 15 days after receipt of all the information required above, either approve the transaction, disapprove for cause, or, except in the case of disapproval for cause, upon the written demand of the owner, furnish an alternate purchaser it approves or the Association may itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. In exercising its power of disapproval the Association must act reasonably and in a fair and non-discriminatory manner and withhold approval only for a reason or reasons rationally related to the protection, preservation and proper operation of the condominium and the purposes as set forth at the beginning of this Section 13. If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the unit itself when required

to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a recordable certificate of approval;

13.3.3. **CLOSING DATE** - The sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase;

13.3.4. **NOTICE OF DISAPPROVAL** - If the Association disapproves the proposed transaction (subject to the qualifications contained in Paragraph 13.3.2. regarding a sale) notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be made. The grounds for disapproval of a transfer or lease may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time the approval is sought.

13.4. **NOTICE OF SUIT** - An owner shall give notice to the Association of every suit or other proceedings which may affect the title to his unit, such notice to be given immediately after the owner receives knowledge thereof.

13.5. **JUDICIAL SALES** - are exempt from this Section.

13.6. **UNAPPROVED TRANSACTIONS** - Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

14. **COMPLIANCE AND DEFAULT** - Each unit owner, each tenant and other invitee shall be governed by, and shall comply with the provisions of, the Condominium Act as amended from time to time, this Declaration, including its exhibits, the Association Articles of Incorporation and the Association By-laws.

14.1. **REMEDIES** - Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner.

14.2. **COSTS AND FEES** - In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney fees.

14.3. **OWNER COMPLAINTS** - In the event of a complaint by an owner against the Association, the Board of Directors or a member thereof, such owner, prior to the institution of any proceedings, shall give written notice in detail of the complaint by Certified Mail to the Board of Directors. The Board shall give a substantive response to the complainant, notify the complainant that a legal opinion has been requested, or notify the complainant that advice has been requested from the Bureau of Condominiums. The failure to act within 30 days and to notify the unit owner within 30 days after the action taken precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceedings, or arbitration arising out of the complaint. If unresolved, a dispute as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings prior to commencing litigation.

14.4. **NO WAIVER OF RIGHTS** - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

15. **AMENDMENTS** - Amendments to any of the Condominium Documents shall be in accordance with the following:

15.1. **REQUIREMENTS** - An Amendment may be proposed either by the Board of Directors or by 25% of the voting interests, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of the voting interests (which vote may be evidenced by later written approval of voters not present), and the separate written joinder of mortgagees where required and shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records;

15.2. **CORRECTORY AMENDMENT** - Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents or in order to comply with applicable laws or requirements of government agencies, the amendment may be adopted by the Board of Directors alone;

15.3. **REGULAR AMENDMENTS** - Amendments may be enacted by a favorable vote of the owners of sixty-seven percent (67%) of the voting interests in the Association;

15.4. **MERGER AMENDMENT** - In the event that this condominium should desire to merge with one or more other condominiums within Bay Colony it may do so upon the affirmative vote of 75% of the voting interests in this condominium and the approval of all record owners of liens;

15.5. **DEVELOPER AMENDMENTS** - Until relinquishment of Developer control of the Association (Turnover) and except as otherwise provided by law in F.S. 718.110(2), (4) and (8), the Developer specifically reserves the right,

without the joinder of any person, to make such amendments to the Declaration and its exhibits or to the plan of development, as may be required by any lender, governmental authority or as may be, in its judgment, necessary or desirable. This paragraph shall take precedence over any other provision of the Declaration or its exhibits.

15.6. **MORTGAGEE JOINDER** - Amendments materially affecting the rights or interests of mortgagees must have the approval of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages who have requested the Association to notify them on any proposed action specified in this paragraph. Implied approval shall be assumed when such holder fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal provided the notice was delivered certified or registered mail, with a "Return Receipt" requested. In the event that mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the Association and recorded in the Public Records of the county where this Declaration is recorded. A change to any of the following shall be considered as material:

- any change in the proportion or percentage by which the owner of the unit shares the common expenses or owns the common surplus;
- reallocation of interests in the general or limited common elements, or rights to their use;
- redefinition of any unit boundaries;
- convertibility of units into common elements or vice versa;

- expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;

15.7. **DEVELOPER'S RIGHTS** - No amendment to this Declaration or any of the condominium documents shall change the rights and privileges of the Developer without the Developer's written approval so long as the Developer holds any units for sale in the ordinary course of business;

15.8. **WRITTEN AGREEMENTS** - Any approval of unit owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of unit owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4).

16. **TERMINATION** - The condominium may be terminated in the following manner:

16.1. **AGREEMENT** - The condominium may be terminated at any time by approval, in writing, of ninety percent (90%) of the voting interests of the Association and the approval of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages. Mortgagee approval shall be as set forth in Paragraph 15.6.

16.2. **VERY SUBSTANTIAL DAMAGE** - If the condominium, as a result of casualty, suffers "very substantial damage" and it is not decided as herein provided that it will be reconstructed or repaired, the condominium form of ownership will thereby terminate without agreement;

16.3. **GENERAL PROVISIONS** - Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements.

The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida;

16.4. **NEW CONDOMINIUM** - The termination of the condominium does not bar creation of another condominium affecting all or any portion of the same property;

16.5. **PARTITION; SALE** - Following termination, the condominium and Association property may be partitioned and sold upon the application of any unit owner. Provided, however, that if following a termination, the owners of sixty-seven percent (67%) of the voting interests of the Association determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

16.6. **LAST BOARD** - The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination;

16.7. **PROVISIONS SURVIVE TERMINATION** - The provisions of this Paragraph 16 are covenants running with the land, and shall survive the

termination of the condominium until all matters covered by this paragraph have been completed.

17. PROVISIONS PERTAINING TO THE DEVELOPER - So long as the Developer holds any unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

17.1. Assessment of the Developer as a unit owner for capital improvements.

17.2. Any action by the Association that would be detrimental to the sale of units or the completion of the project by the Developer including such use of unsold units and common areas as may facilitate completion, sale, maintenance of a sales office, showing the property and display of signs.

18. RIGHTS OF MORTGAGEES

18.1. PARTIAL EXCUSAL FROM PRIOR ASSESSMENTS - A first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed, but in no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less. The first mortgagee's liability does not commence until 30 days after the date the first mortgagee received the last payment of principal or interest. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

18.2. RIGHTS TO INFORMATION - Upon receipt by the Association from any institutional mortgagee, Guarantor or Insurer of a copy of the mortgage held by such mortgagee, Guarantor or Insurer on a Unit, together with a written

request from such mortgagee or an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge a reasonable fee:

18.2.1. **FINANCIAL STATEMENTS** - A copy of a financial statement of the Association for the immediately preceding fiscal year; and

18.2.2. **INSURANCE CANCELLATION** - Written notice of the cancellation or termination by the Association of any policies of insurance covering the Association Common Areas or any improvements thereon, or any fidelity bonds of the Association; and

18.2.3. **DAMAGE TO CONDOMINIUM** - Written notice of any damage or destruction to the improvements located on the Common Elements or Association property which affects a material portion of the common elements or Association property or the unit securing its mortgage; and

18.2.4. **EMINENT DOMAIN** - Written notice of condemnation or eminent domain proceeding affecting a material portion of the condominium property or the unit securing its mortgage; and

18.2.5. **DELINQUENT ASSESSMENTS** - Written notice of failure by an Owner owning a Unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments where such failure or delinquency has continued for a period of sixty (60) days.

18.2.6. **FAILURE TO NOTIFY** - The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof.

19. **ENFORCEMENT OF ASSESSMENT LIENS** - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and the Association may also bring an action to recover a money judgment. After a judgment of foreclosure has been entered the unit owner during his occupancy, if so ordered by the Court, shall be required to pay a reasonable rental. If the unit is rented or leased during the pendency of a foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The Association shall have all the powers provided in F.S. 718.116 and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid assessments and reasonable attorneys' fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

19.1. **CREATION AND ENFORCEMENT OF CHARGES** - The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs and expenses to the Association which cannot be secured as assessments, regular or special, under F. S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

20. **ASSOCIATION MEMBERSHIP** - The qualification of members and the manner of their admission shall be as provided in the Bylaws.

21. **COMMON EXPENSES AND COMMON SURPLUS** - Each unit's share shall be that share of the whole set forth in Exhibit "F".

22. **CONDEMNATION:**

22.1. **DEPOSIT OF AWARDS WITH ASSOCIATION** - The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall

be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

22.2. **DETERMINATION WHETHER TO CONTINUE CONDOMINIUM** - Whether the condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

22.3. **DISBURSEMENT OF FUNDS** - If the condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the condominium is terminated after a casualty. If the condominium is not terminated after condemnation, the size of the condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

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

22.5. **UNITS REDUCED BUT TENANTABLE** - If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following

purposes in the order stated, and the following changes shall be effected in the condominium:

22.5.1. **RESTORATION OF UNIT** - The unit shall be made tenable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit;

22.5.2. **DISTRIBUTION OF SURPLUS** - The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

22.6. **UNIT MADE UNHABITABLE** - If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the condominium:

22.6.1. **PAYMENT OF AWARD** - The fair market value of the unit immediately prior to the taking, as determined by agreement between the unit owner and the Association or by arbitration in accordance with Section 22.6.4. following, shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s);

22.6.2. **ADDITION TO COMMON ELEMENTS** - If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors;

22.6.3. **ADJUSTMENT OF SHARES IN COMMON ELEMENTS** - The shares in the common elements appurtenant to the units that continue as part of the condominium shall be adjusted to distribute the ownership of the common

elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment;

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

22.7. **TAKING OF COMMON ELEMENTS** - Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

22.8. **AMENDMENT OF DECLARATION** - The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of unit owners (voting

interests) of this Condominium, without the consent of any mortgagee being required for any such amendment.

23. **VOTING** - Each unit shall have one full indivisible vote in all matters.

24. **RESERVED EASEMENTS** - Developer, for itself and its successors and assigns, reserves easements over the condominium property as necessary to complete future development, if any, including construction access and utilities.

25. **CROSS USE EASEMENTS - ADJACENT PROPERTY** - The Developer reserves the right to construct condominiums and non-condominium villas on property adjacent to Brighton. The projects may make joint use with Brighton of portions of a common entrance, driveway, parking and landscaped grounds which are condominium property and/or Bay Colony or Island Neighborhood common areas. Developer reserves the right to grant non-exclusive cross use easements to those projects, their owners, tenants, guests and invitees for use of these areas provided that each Association shall pay a pro-rata share of the expenses associated with these areas based upon the number of units in each development.

25.1. **ADDITIONAL CROSS USE EASEMENTS** - The Developer further reserves the right to grant additional non-exclusive cross use easements to future Bay Colony Condominiums and Villas for the construction of a boardwalk along or across the landward or seaward sides of the dune area to the shoreline of the Gulf of Mexico and to users of the boardwalk.

26. **COMMUNITY ASSOCIATION MEMBERSHIP AND OBLIGATIONS** - Brighton exists within the Pelican Bay planned community and its Bay Colony area, each of which is administered by a Community Association pursuant to a set of recorded Covenants and Restrictions. Consequently, Brighton owners are members of, subject to, and are required to pay assessments to the following organizations:

26.1. **PELICAN BAY OF NAPLES FOUNDATION, INC.** - This is the Master Community Association for the whole development. The Declaration and General Protective Covenants for Pelican Bay are dated May 7, 1979 and are recorded in O. R. Book 825 at Page 1755 of the Collier County, Florida Public Records.

26.2. **THE BAY COLONY COMMUNITY ASSOCIATION, INC.** - This Association administers the Bay Colony area of Pelican Bay pursuant to the Amended and Restated Declaration and General Protective Covenants of Bay Colony dated August 7, 1989 and recorded in O. R. Book 1461 at Page 1048 of the Collier County, Florida Public Records. As provided in the Amended and Restated Declaration and General Protective Covenants for Bay Colony, an area of Pelican Bay within which this condominium is located, and to which Covenants it is subject, the Association and the Bay Colony Community Association, Inc. may agree that portions of the Bay Colony landscaped and improved common areas near and adjacent to the condominium, designated or to be designated the Island Neighborhood, and which serve the condominium, shall be maintained for the benefit of the condominium and other users at a higher level of service at their expense.

26.3. **THE BAY COLONY BEACH CLUB** - The Bay Colony Beach Club is a pool and dining facility in which membership is mandatory for Bay Colony residents located upon Bay Colony Community Association Common Areas and which is to be owned and administered by that Association. Brighton owners shall be members and must pay membership fees and assessments, including user fees. Beach Club expenses will be included in Bay Colony assessments.

26.4. **ISLAND NEIGHBORHOOD** - As the Amended and Restated Declaration and General Protective Covenants for Bay Colony are supplemented to include specific covenants which apply to the Island Neighborhood area including

assessments specific to that area, Brighton owners are subject to such covenants and obligated to pay such assessments.

27. **CABLE TV AND ELECTRONIC SECURITY** - The Association may enter into contracts with companies to supply basic cable television and electronic security to the condominium because this arrangement would be of benefit to the unit owners. The fees for cable television and electronic security services shall be a common expense of the Association.

28. **TIME SHARE PROHIBITED** - No time share estates may be created in this condominium.

29. **LIMITATION ON ADDITIONAL CONSTRUCTION** - Due to the potential adverse impact to the beach and dune system that could result from additional development on the condominium property, the shore-parallel and seaward extent of the structures permitted by the Florida Department of Natural Resources shall not be increased, nor will any additional major structures be permitted, which would exceed the limits established by the permitted construction seaward of the coastal construction control line. This restriction shall be enforceable by the Florida Department of Natural Resources.

30. **SEVERABILITY AND NON-WAIVER** - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby. The failure of the Association in any instance to enforce any covenant or provision of this Declaration or any of the condominium documents shall not constitute a waiver of its right to do so thereafter in other instances.

THIS DECLARATION OF CONDOMINIUM and exhibits hereto made and entered into
this 14th day of April, 1994.

WCH COMMUNITIES, INC., a Florida
Corporation, formerly
WESTINGHOUSE COMMUNITIES OF
NAPLES, INC., a Florida
Corporation, Developer

(CORPORATE
SEAL)

BY Terry P. Archer
(Print) Terry P. Archer
(Title) Vice-President
(Address) 801 Laurel Oak Drive, Suite 102
Naples, FL 33963

[Signature]
Suzanne Farber

[Signature]
Pamela Probyus

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 14th day of
April, 1994, by TERRY P. ARCHER, as Vice-President of WCH
COMMUNITIES, INC., a Florida Corporation, formerly WESTINGHOUSE COMMUNITIES OF
NAPLES, INC., a Florida corporation, on behalf of said corporation. He is
personally known to me and did not take an oath.

NOTARY PUBLIC

(Sign)

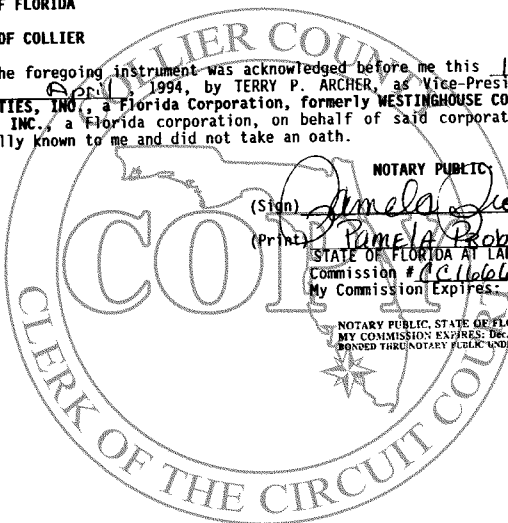
[Signature]

(Print)

Pamela Probyus

STATE OF FLORIDA AT LARGE (SEAL)
Commission # 11111111
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: Dec. 9, 1995.
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS.



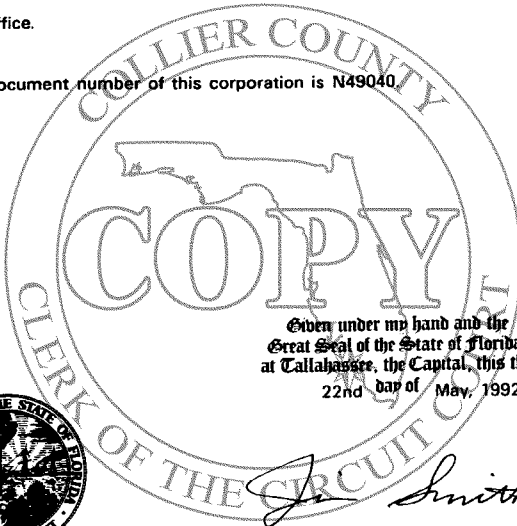
State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of BRIGHTON AT BAY COLONY CONDOMINIUM ASSOCIATION, INC., a corporation organized under the Laws of the State of Florida, filed on May 21, 1992, as shown by the records of this office.

The document number of this corporation is N49040.



Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 22nd day of May, 1992.



CR2EO22 (2-91)

Jim Smith

Jim Smith
Secretary of State

001938

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OR BOOK

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ARTICLES OF INCORPORATION

OF

BRIGHTON AT BAY COLONY CONDOMINIUM ASSOCIATION, INC.

(A NONPROFIT FLORIDA CORPORATION)

92 MAY 21 AM 10: 54
TALLAHASSEE, FLORIDA

ARTICLE I

The name of this corporation is Brighton At Bay Colony Condominium Association, Inc.

ARTICLE II

The purpose for which this corporation is organized is to act as the governing association of the proposed Brighton At Bay Colony, A Condominium, located at 8231 Bay Colony Drive, Naples, Florida 33963.

ARTICLE III

The qualification of members and the manner of their admission shall be as follows: Any approved person or persons who hold title in fee simple to a Condominium unit in the Condominium shall by virtue of such ownership be a member of this corporation. Provided however, that transfer of membership shall be made only as a part of and incident to the transfer of ownership of a condominium unit with such transfers being subject to and controlled by the transfer procedures set forth in the Declaration of Condominium. After receiving approval of the Association required by the Declaration of Condominium, change of membership in the Association shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing record title to a unit in the condominium and the delivery of a copy of the recorded instrument to the Association within a reasonable time following such recordation. Such delivery is not required for initial conveyances by the

Developer. The owner designated by such instrument thereby becomes a member of the Association and the membership of the previous owner is thereby terminated.

ARTICLE IV

This corporation shall exist perpetually.

ARTICLE V

The name and residence of the Incorporator is as follows:

Richard D. DeBoest
1415 Hendry Street
Fort Myers, Florida 33901

The rights and interests of the incorporator shall automatically terminate when these Articles are filed with the Secretary of State.

ARTICLE VI

The affairs of the corporation are to be managed initially by a Board of three Directors (which may be expanded to five) who will be appointed by the Developer as provided for in the By-Laws. Subsequent Boards may be composed of either three or five Directors.

ARTICLE VII

The names of the Officers who are to serve until the first election or appointment under the Articles of Incorporation are:

GEORGE A. PAGE - President
ROBERT L. ELWOOD - Vice President
SUSAN H. WATTS - Secretary
PAMELA L. WALKER - Treasurer

ARTICLE VIII

The number of persons constituting the first Board of Directors shall be three, and their names and addresses are as follows:

GEORGE A. PAGE
801 Laurel Oak Drive, Suite 715
Naples, Florida 33963

ROBERT L. ELWOOD
801 Laurel Oak Drive, Suite 715
Naples, Florida 33963

SUSAN H. MATTS
801 Laurel Oak Drive, Suite 715
Naples, Florida 33963

ARTICLE IX

After turnover, the By-Laws of the corporation are to be made, altered or rescinded by 67% of the voting interests of the corporation; prior to turnover by a majority of the Directors alone.

ARTICLE X

Amendments to these Articles of Incorporation may be proposed and adopted as follows:

After turnover, an Amendment may be proposed by either the Board of Directors or by Twenty-five Percent (25%) of the voting interests and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which includes a notice of the substance of the proposed Amendment; prior to turnover by a majority of the Directors alone.

After turnover, the Amendment must be approved by a vote of 67% of the voting interests of the corporation; prior to turnover, by the Directors alone.

ARTICLE XI

Each unit in the Condominium shall have one full indivisible vote.

ARTICLE XII

This corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation.

ARTICLE XIII

This corporation shall have all the powers permitted by law together with such additional specific powers as are contained in the Declaration and By-Laws.

ARTICLE XIV

No part of the net earnings of this corporation shall inure to the benefit of any member or individual, except through the acquisition, construction, management, maintenance or care of Association property or through the rebate of the excess membership dues, fees or assessments.

ARTICLE XV

The name the resident agent and place for service of process shall be J. Wayne Falbey, whose address is: 801 Laurel Oak Drive, Suite 715, Naples, Florida 33963.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 19th day of MAY, 1992.


RICHARD D. DeBOEST (SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of MAY, 1992, by RICHARD D. DeBOEST, who is personally known to me.

NOTARY PUBLIC:

(Sign) 

(Print) Maguire S. Baer

STATE OF FLORIDA AT LARGE (SEAL)

COMMISSION # CC 003291

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. MAY 25, 1996
BONDED THRU GENERAL INS. UND.

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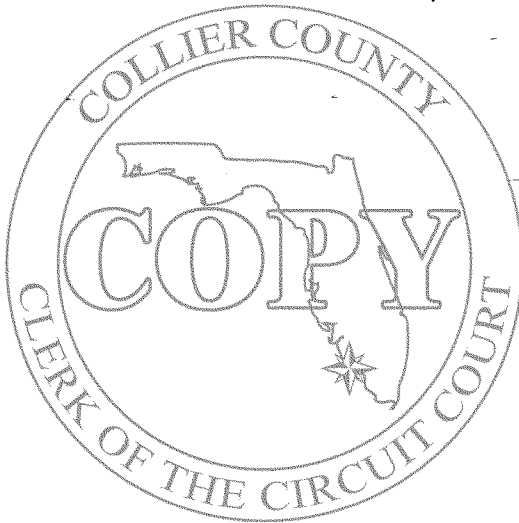
92 MAY 21 AM 10: 55

ACCEPTANCE OF REGISTERED AGENT

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Having been named to accept service of process for the above-named corporation, at the place designated in these Articles of Incorporation, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.


J. WAYNE FALBEY



CONDOMINIUM PLAT BOOK PAGE

BRIGHTON AT BAY COLONY, A CONDOMINIUM

Reference is made to the Condominium Plan for Brighton at Bay Colony, a Condominium, recorded in the Public Records of Collier County, Florida, as Book 000659, Page 001938, and to the Condominium Plan for Bay Colony, a Condominium, recorded in the Public Records of Collier County, Florida, as Book 000659, Page 001937.

The following is a description of the property shown on the attached plat:

TRACT A: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT B: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT C: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT D: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT E: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT F: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT G: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT H: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

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TRACT U: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

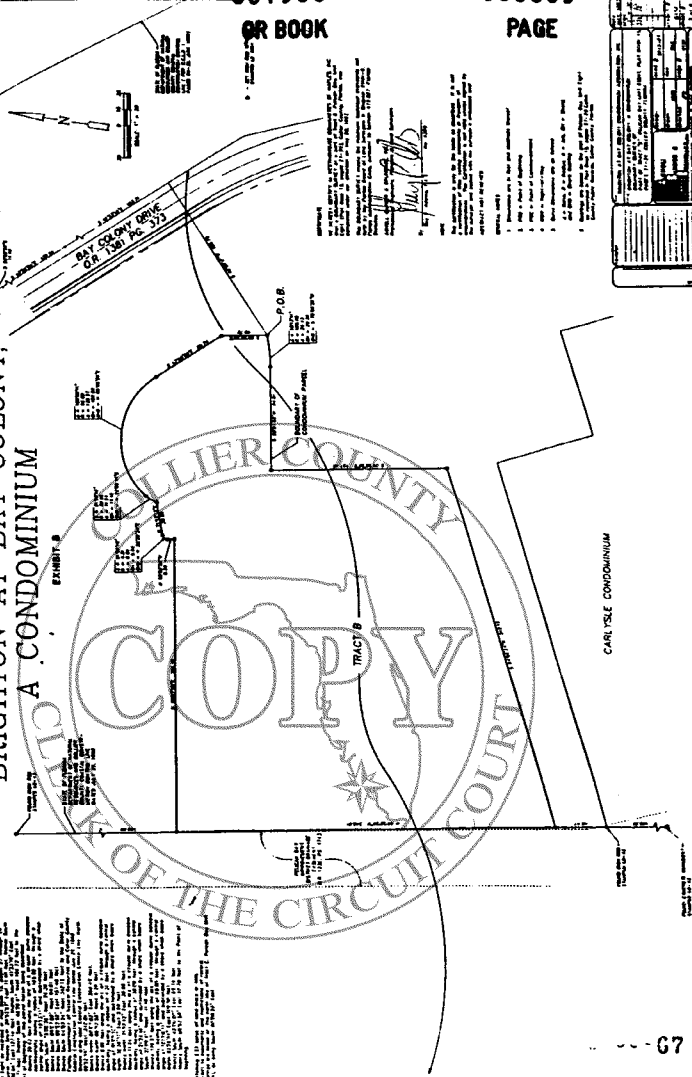
TRACT V: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT W: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT X: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT Y: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)

TRACT Z: 1.0000 AC. (1.0000 AC. LESS 0.0000 AC. RESERVED FOR COMMON USES AND EASEMENTS AS SHOWN ON THE PLAT.)



IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County, this 15th day of August, 1988.

[Signature]

Notary Public for Florida

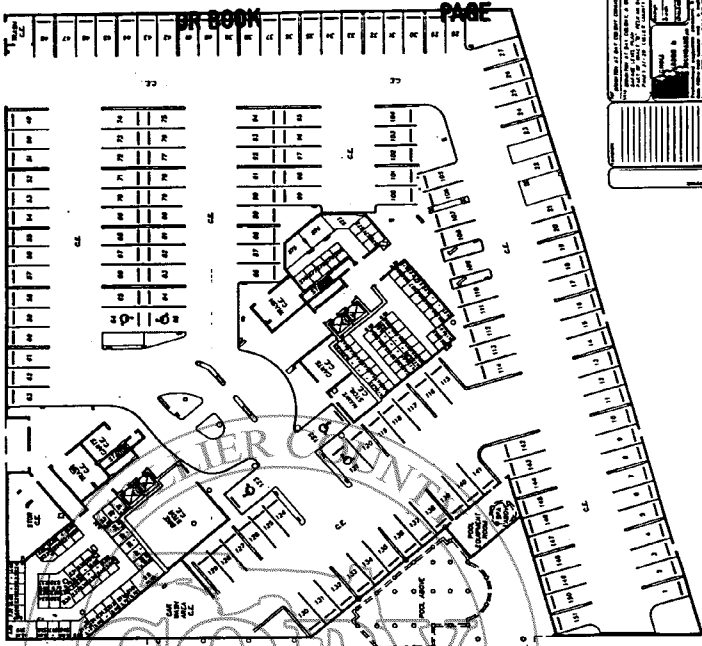
My Commission Expires 12/31/1991

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TIME	10:00 AM
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DEPUTY CLERK	[Signature]
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FRONT BOOK

PAGE

BRIGHTON AT BAY COLONY,
A CONDOMINIUM



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- 1500 PORCHAGE STRAIGHT

GENERAL NOTES:
 1. ALL UNITS ARE TO BE FINISHED AS SHOWN.
 2. THE OWNER SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF THE COMMON AREAS.
 3. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF THE UNIT.
 4. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL TAXES AND FEES.
 5. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL HOA FEES.
 6. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL INSURANCE PREMIUMS.
 7. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL UTILITIES.
 8. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL OTHER CHARGES.
 9. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL DAMAGES.
 10. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS OF DEFENSE.

UNIT INFORMATION SHEET

UNIT NO. _____

OWNER NAME _____

ADDRESS _____

PHONE NO. _____

DATE _____

SALES REPRESENTATIVE _____

SALES OFFICE _____

SALES ADDRESS _____

SALES PHONE NO. _____

SALES FAX NO. _____

SALES E-MAIL _____

SALES WEBSITE _____

SALES LICENSE NO. _____

SALES EXPIRES _____

SALES STATE _____

SALES COUNTRY _____

SALES CITY _____

SALES ZIP _____

SALES COUNTY _____

SALES DISTRICT _____

SALES ZONE _____

SALES AREA _____

SALES OFFICE HOURS _____

SALES OFFICE LOCATION _____

SALES OFFICE CONTACT _____

SALES OFFICE PHONE _____

SALES OFFICE FAX _____

SALES OFFICE E-MAIL _____

SALES OFFICE WEBSITE _____

SALES OFFICE LICENSE NO. _____

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SALES OFFICE STATE _____

SALES OFFICE COUNTRY _____

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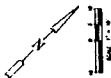
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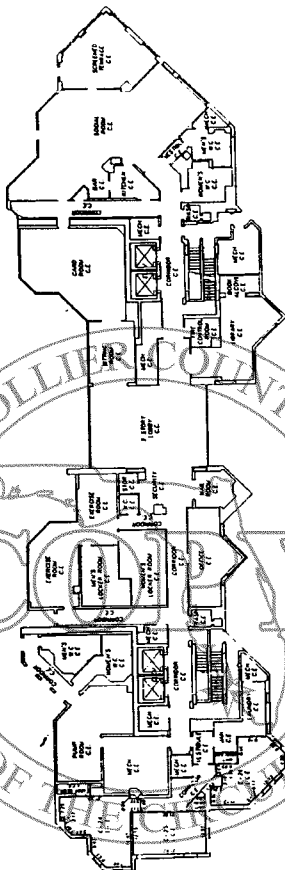
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BRIGHTON AT BAY COLONY,
A CONDOMINIUM

EXHIBIT B



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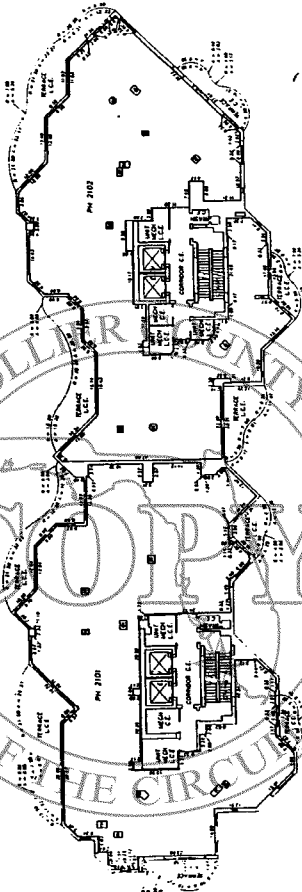
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BRIGHTON AT BAY COLONY,
A CONDOMINIUM

EXHIBIT B



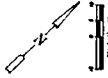
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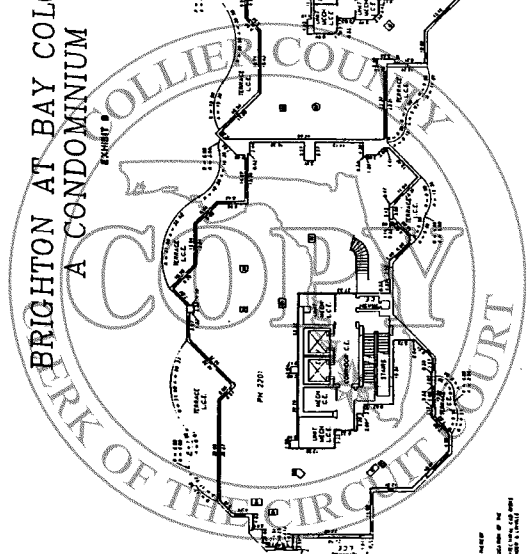
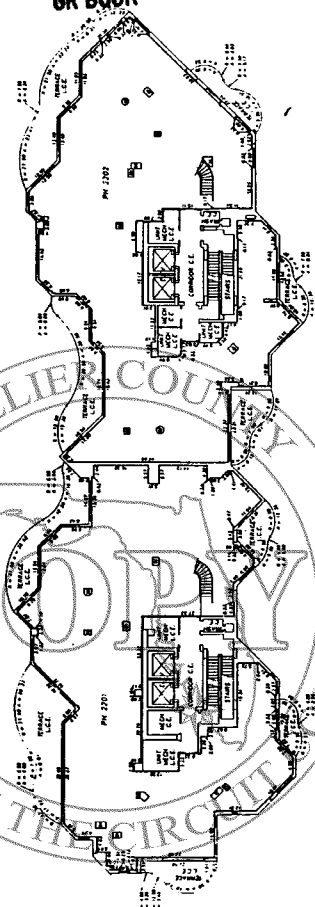
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BRIGHTON AT BAY COLONY,
A CONDOMINIUM
NUMBER 9



SECTION 10.11
 CONDOMINIUM ACT, CHAPTER 718, FLORIDA STATUTES
 SECTION 718.102(1) - 718.102(10)
 SECTION 718.103(1) - 718.103(10)
 SECTION 718.104(1) - 718.104(10)
 SECTION 718.105(1) - 718.105(10)
 SECTION 718.106(1) - 718.106(10)
 SECTION 718.107(1) - 718.107(10)
 SECTION 718.108(1) - 718.108(10)
 SECTION 718.109(1) - 718.109(10)
 SECTION 718.110(1) - 718.110(10)
 SECTION 718.111(1) - 718.111(10)
 SECTION 718.112(1) - 718.112(10)
 SECTION 718.113(1) - 718.113(10)
 SECTION 718.114(1) - 718.114(10)
 SECTION 718.115(1) - 718.115(10)
 SECTION 718.116(1) - 718.116(10)
 SECTION 718.117(1) - 718.117(10)
 SECTION 718.118(1) - 718.118(10)
 SECTION 718.119(1) - 718.119(10)
 SECTION 718.120(1) - 718.120(10)
 SECTION 718.121(1) - 718.121(10)
 SECTION 718.122(1) - 718.122(10)
 SECTION 718.123(1) - 718.123(10)
 SECTION 718.124(1) - 718.124(10)
 SECTION 718.125(1) - 718.125(10)
 SECTION 718.126(1) - 718.126(10)
 SECTION 718.127(1) - 718.127(10)
 SECTION 718.128(1) - 718.128(10)
 SECTION 718.129(1) - 718.129(10)
 SECTION 718.130(1) - 718.130(10)
 SECTION 718.131(1) - 718.131(10)
 SECTION 718.132(1) - 718.132(10)
 SECTION 718.133(1) - 718.133(10)
 SECTION 718.134(1) - 718.134(10)
 SECTION 718.135(1) - 718.135(10)
 SECTION 718.136(1) - 718.136(10)
 SECTION 718.137(1) - 718.137(10)
 SECTION 718.138(1) - 718.138(10)
 SECTION 718.139(1) - 718.139(10)
 SECTION 718.140(1) - 718.140(10)

PLAT BOOK NO.	001938
PAGE NO.	000665
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EXHIBIT "C" TO DECLARATION

BY-LAWS

OF

BRIGHTON AT BAY COLONY CONDOMINIUM ASSOCIATION, INC.

1. **IDENTITY** - These are the By-Laws of Brighton At Bay Colony Condominium Association, Inc., a nonprofit Florida Corporation formed for the purpose of administering Brighton At Bay Colony Condominium which is or will be located in Bay Colony, Pelican Bay, at Naples, Collier County, Florida, upon the lands described in the Declaration of Condominium. (The corporation shall hereafter be referred to as the "Association".)

1.1. **OFFICE** - The office of the Association shall be at the Condominium or such other location within the County as may from time to time be determined by the Board of Directors.

1.2. **FISCAL YEAR** - The fiscal year of the Association shall be the calendar year, unless otherwise determined by the Board of Directors.

1.3. **SEAL** - The seal of the Association shall bear the abbreviated name of the Association, the word "Florida," and the year of establishment, 1992.

2. **MEMBERS' MEETINGS**

2.1. **ANNUAL MEETINGS** - Annual members' meetings shall be held at the Condominium or at such other convenient location as may be determined by the Board of Directors, no later than the month of April each year, in conjunction with the election of Directors and for transacting any business authorized to be transacted by the members.

2.2. **SPECIAL MEETINGS** - Special member's meetings shall be held whenever called by the President, Vice President or by a majority of the Board

of Directors and when requested by written notice from 25% of the Association voting interests. In the event that the Board of Directors adopts a budget requiring assessments exceeding 115% of the assessments for the preceeding year, the Board upon written application of 10% of the voting interests shall call a special meeting of the unit owners to consider and enact an alternate budget. Members meetings to recall a member or members of the Board of Directors may be called by 10% of the Association voting interests.

2.3. NOTICE OF MEMBERS' MEETINGS - Notice of members meetings including a recall meeting and the annual meeting, which must include an identification of agenda items, shall be delivered or mailed to each unit owner by United States mail, unless waived in writing, at least 14 days prior to the meeting, provided however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4. next following. An officer of the Association shall execute an affidavit of mailing or delivery per F. S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the condominium property at least 14 continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location on the condominium property upon which all notices of unit owner meetings shall be posted.

2.4. BOARD ELECTION MEETINGS - NOTICE AND PROCEDURE - The regular election shall occur on the date of the annual meeting.

2.4.1. Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date

of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the Association not less than 40 days before a scheduled election. Not less than 30 days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than 35 days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the information sheet and shall have no liability for its contents. The Board shall hold a meeting within 5 days after the deadline for the candidates to provide their notices to the Association of intent to run. At this meeting, the Board shall accept additional nominations. Any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person.

2.4.2. A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Administration or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.

2.4.3. There is no quorum requirement; however at least 20 percent of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.

2.4.4. 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.

2.5. NOTICE - OWNERS BUDGET MEETING - Notice of a special meeting called by the Board at the written request of 10% of the owners because of a budget exceeding 115% of that of the preceding year requires not less than 10 days' written notice to each unit owner.

2.6. NOTICES SPECIFIC - All notices of meetings shall state clearly and particularly the time, place, and purpose or purposes of the meeting and shall incorporate an identification of agenda items.

2.7. QUORUM - A quorum at members' meetings shall consist of persons entitled to cast a majority of the voting interests of the entire membership. Decisions made by a majority of the voting interests represented at a meeting at which a quorum is present in person or by proxy shall be binding and sufficient for all purposes except such decisions as may by F.S. 718 or the documents require a larger percentage in which case the percentage required in F.S. 718 or the Documents shall govern.

2.8. OWNER PARTICIPATION - Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration and manner of unit owner participation. Such rules must be adopted in advance and in written form. Any unit owner may tape record or videotape a meeting of the unit owners subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

2.9. INDIVISIBLE VOTE - Each unit shall have one indivisible vote. If multiple owners of a unit cannot agree on a vote, the vote shall not be counted. Voting certificates are not authorized.

2.10. PROXIES - Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Secretary before or at the voter registration immediately preceding the meeting. A photographic, photostatic or equivalent reproduction of a proxy is a sufficient proxy pursuant to F.S. 607.0722. Except as specifically otherwise provided in this paragraph, or by the Condominium Act from time to time, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes. Both limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or By-Laws; and for any other matter which F.S. 718 requires or permits a vote of the unit owners. No proxy, limited or general, shall be used in the election of Board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given.

2.11. NO QUORUM - If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.12. ORDER OF BUSINESS - The order of business at annual members' meetings and, as far as applicable at all other members' meetings, may be:

- (a) Election of a Chairman of the meeting, unless the President or Vice President of the Association is present then he (or she) shall preside.
- (b) Collection of ballots.
- (c) Checking of signatures and unit identifications on ballot outer envelopes against the eligible voter lists.
- (d) Registering proxies and counting votes.
- (e) Proof of Notice of meeting or waiver of notice.
- (f) Calling of the roll and certifying of proxies.
- (g) Reading and disposal of any unapproved minutes.
- (h) Reports of Directors.
- (i) Reports of Committees.
- (j) Announcement of the results of the election of Directors.
- (k) Unfinished business.
- (l) New business.
- (m) Adjournment.

3. BOARD OF DIRECTORS

3.1. NUMBER, TERM, AND QUALIFICATIONS. The affairs of the Corporation shall be governed initially by a Board composed of three (3) persons appointed by the Developer. The Developer-appointed Board may be, at the Developer's option, expanded to five (5) persons. The Board, after turnover of control by the Developer, may consist of three to five as may be determined from time to time by the voting interests of the Association. All non-Developer Directors shall be members or spouses of members. All officers of a corporation, trust, partnership or other such owner shall be deemed to be members so as to be eligible for Board membership. Directors shall be elected by the Voting Interests on the date of the annual meeting, except for Developer-appointed Directors. After turnover, members of the Board shall be elected with a majority

elected for two (2) years and the balance elected for one (1) year to provide continuity. Those persons receiving the highest number of votes shall serve the two year terms. In the event of a tie, a blind drawing shall determine the result.

3.2. **TERM OF SERVICE** - The term of each Director's service shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified or until the Director is recalled in the manner provided in the Condominium Act by a majority of the voting interests. Provided that a seat held by a Director who ceases to be an owner shall thereby automatically become vacant.

3.3. **BOARD VACANCIES** - Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by appointment by a majority vote of the remaining Directors; provided, however, that if a majority or more of the Board members are removed by recall the vacancies shall be filled in accordance with procedural rules to be adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes; provided further that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal; and further provided that during the time that both the Developer and unit owners other than the Developer have representation on the Board, the filling of vacancies shall be in compliance with the provisions of Rule 7D-23.001(12), Florida Administrative Code. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

3.4. **ORGANIZATIONAL MEETING** - The organizational meeting of each newly elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present.

Unless otherwise noticed, it shall be held immediately following the annual meeting. Election of officers may be by secret ballot.

3.5. **REGULAR MEETINGS** - Regular 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 regular meetings, unless noticed previously, shall be given to each Director personally or by mail, telephone or telecopier at least three days prior to the day named for such meeting.

3.6. **SPECIAL MEETINGS** - Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than three day's notice of the meeting (except in an emergency) shall be given personally or by mail, telephone or telecopier, which notice shall state the time, place and purpose of the meeting.

3.7. **WAIVER OF NOTICE** - Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

3.8. **NOTICE TO OWNERS** - Notices of Directors meetings, and meetings of committees to make recommendations regarding the Association budget or which have the authority to take action on behalf of the Board shall be posted conspicuously on the condominium property at least 48 continuous hours in advance for the attention of unit owners, except in an emergency. Notices shall specifically incorporate an identification of agenda items. Meetings at which a regular assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed, or

approved, shall be mailed or delivered to the unit 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 by an affidavit executed by the Secretary and filing among the official records of the Association. Upon prior notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the condominium property upon which all notices of Board meetings shall be posted.

3.9. OWNER PARTICIPATION - Meetings of the Board of Directors and any committee thereof required to give notice pursuant to 3.8 above, at which a quorum of the members of that committee are present shall be open to all unit owners. The right to attend such meetings includes the right to speak with reference to all identified agenda items provided however, the Association may adopt reasonable rules governing the frequency, duration and manner of unit owner participation. Such rules must be adopted in advance and in written form. Unit owners shall have the right to tape record or videotape the meetings of the Board of Administration or Committee subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

3.10. BOARD MEETINGS, QUORUM AND VOTING - A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of Directors present at a meeting at which a quorum is present shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings, except as may be provided by the Condominium Act from time to time, and a vote or abstention for each member present shall be recorded in the minutes. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, which must be properly noticed, any business which might have been transacted at the meeting as originally called

may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

3.11. PRESIDING OFFICER - The presiding officer at Directors' meetings shall be the President if such an officer has been elected; and if none, then the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

3.12. DIRECTOR COMPENSATION - Directors shall serve without pay unless the voting interests annually authorize Director's fees, but shall be entitled to reimbursement for expenses reasonably incurred.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS - All of the powers and duties of the Association existing under the Florida Corporation Statutes, the Condominium Act, the Declaration of Condominium, the Corporate Charter and these By-laws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

4.1. TO ADOPT BUDGETS, BORROW MONEY AND MAKE AND COLLECT ASSESSMENTS AGAINST owners to defray the costs of the Association.

4.2. TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and duties.

4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the Condominium property.

4.4. TO ENACT RULES AND REGULATIONS concerning the use of the common elements and the units, subject to any limitations contained in the Condominium Act and the Declaration of Condominium.

4.5. THE RECONSTRUCTION OF COMMON ELEMENTS IMPROVEMENTS AFTER CASUALTY and the further improvement of the property.

4.6. TO APPROVE OR DISAPPROVE PROPOSED ACTIONS in the manner provided by the Condominium Declaration.

4.7. TO ENFORCE by legal means the provisions of applicable laws and the condominium documents.

4.8. TO CONTRACT FOR MANAGEMENT of the Condominium.

4.9. TO CARRY INSURANCE for the protection of the unit owners and the Association.

4.10. TO PAY THE COST OF ALL UTILITY SERVICES rendered to the Condominium and not billed to owners of individual units.

4.11. TO EMPLOY PERSONNEL and designate other officers for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.12. TO BRING AND DEFEND SUITS, MAKE AND EXECUTE CONTRACTS, DEEDS, MORTGAGES, LEASES and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the condominium property necessary or desirable for proper operation of the Condominium.

4.13. REQUIREMENTS - CONTRACTS FOR PRODUCTS AND SERVICES - All contracts for the purchase, lease or renting of materials or equipment or for services, on which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding 5 percent of the total annual budget of the Association including reserves except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within the County serving the Association. The Association need not accept the lowest bid.

This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time.

4.14. TO LEVY FINES - The Directors may, pursuant to F.S. 718.303, impose fines not to exceed \$100.00 per violation, for failure to comply with the provisions of the condominium documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00.

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

1. A statement of the date, time and place of the hearing;
2. A statement of the provisions of the declaration, association charter, bylaws, or rules and regulations which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the association.

4.14.2. RESPONDENT'S RIGHTS - The party against whom the fine or sanction may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the association.

4.14.3. HEARING COMMITTEE - The hearing must be held before a committee of other unit owners, who are not the Board of Directors. If the committee does not agree with the fine, the fine may not be levied.

4.15. **COMMITTEES** - The Directors may appoint committees except that nominating committees for the election of Directors is prohibited. All committees and committee members shall serve at the pleasure of the Board.

4.16. **FIRE SAFETY COMPLIANCE** - The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the condominium units with the applicable Fire and Life Safety Code.

4.17. **HURRICANE SHUTTERS** - The Board of Directors shall adopt hurricane shutter specifications for each building within each condominium operated by the Association which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board.

5. OFFICERS

5.1. **EXECUTIVE OFFICERS** - The executive officers of the Association shall be the President, one or more Vice Presidents, a Secretary, a Treasurer, and such assistant officers as may be desired, all of whom shall be elected annually by and from the Board of Directors and who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary.

5.2. **PRESIDENT - POWERS AND DUTIES** - The President shall be the chief executive officer of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

5.3. **VICE PRESIDENT - POWERS AND DUTIES** - The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the

President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

5.4. **SECRETARY - POWERS AND DUTIES** - The Secretary shall keep the minutes of all proceedings of the Directors and the members; shall attend to the giving and serving of all notices to the members and Directors and other notices required by law; shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed; shall keep and have custody of the records of the Association, except those of the Treasurer; and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

5.5. **TREASURER - POWERS AND DUTIES** - The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness; shall keep the assessment rolls and accounts of the members; shall keep the books of the Association in accordance with good accounting practices; and shall perform all other duties incident to the office of the Treasurer of a corporation.

5.6. **EMPLOYEE COMPENSATION** - The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

5.7. **INDEMNIFICATION** - Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing,

in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the contrary, in instances where the Director, officer, or committee member admits or is adjudged guilty of willful malfeasance, misfeasance or nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

5.8. **DELEGATION** - To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

6. **MINUTES AND INSPECTION OF RECORDS** - Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner and shall be reduced to written form within thirty (30) days and these, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which may be exempted by the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and Board members within 5 working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying on the condominium or Association property. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying.

7. **FISCAL MANAGEMENT** - Shall be in accordance with the following provisions:

7.1. **BUDGET** - A proposed annual budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance and administration of the Condominium including insurance and management fees, if any, and for all of the unpaid operating expenses previously incurred. It shall accrue reserves per F.S. 718.112(2)(F)(2) which may later be waived by the owners. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests present at a duly called meeting of the Association. It will contain a reasonable allowance for contingencies and provide funds for all unpaid operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year.

7.2. **MAILING** - A copy of the proposed annual budget shall be mailed or delivered to the unit owners not less than 14 days prior to the meeting of the directors at which the budget will be adopted together with a notice of the meeting.

7.3. **ASSESSMENTS** - The shares of the unit owners of the common expenses may be made payable in installments of from one to three months in advance and shall become due on the first day of each such period and which shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed in the Public Records of Collier County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

7.4. **SPECIAL ASSESSMENTS AND CHARGES** - Assessments and charges for expenses which are not provided for and funded in the Budget shall be made by the Board of Directors, and the time of payment shall likewise be determined by them.

7.5. **ASSESSMENT ROLL** - The assessments for common expenses and charges shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of or by the Board of Directors as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

7.6. **LIABILITY FOR ASSESSMENTS AND CHARGES** - A unit owner shall be liable for all assessments and charges coming due while the owner of a unit, and such owner and owner's grantees after a voluntary conveyance shall be jointly and severally liable for all unpaid assessments and charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any common elements or Association property or by abandonment of the unit for which the assessments are made. A first mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed, but in no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less. The first mortgagee's liability does not commence until 30 days after the date the first mortgagee received the last payment of principal or interest. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

7.7. LIENS FOR ASSESSMENTS - The unpaid portion of an assessment including an accelerated assessment which is due, together with costs, interest and reasonable attorneys' fees for collection, shall be secured by a lien upon the unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in accordance with the requirements of Florida Statute 718.116.

7.8. UNPAID CHARGES - Unpaid charges which are due together with costs, interest and reasonable attorney's fees including appeals for collection shall be the basis for an action at law by the Association against the unit owner.

7.9. COLLECTION - INTEREST; ADMINISTRATIVE LATE FEE; APPLICATION OF PAYMENTS - Assessments paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days shall bear interest at the highest lawful rate from time to time (now 18% per annum) from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for which payment is late. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's fees and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

7.10. COLLECTION - SUIT - The Association, at its option, may enforce collection of delinquent assessments by suit at law, by foreclosure of the lien securing the assessments, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with those which have become due by acceleration plus interest thereon and all costs incident to the collection and the proceedings, including

reasonable attorneys' fees, including appeals. The Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the assessment lien 30 days before commencing foreclosure, unless Notice of Contest of Lien has been filed. The lien created by F.S. 718.116(5)(a) shall secure only assessments, interest, costs and attorneys fees and not fines, charges or other fees.

7.11. **ACCOUNTS** - All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

7.12. **ASSOCIATION DEPOSITORY** - The depository of the Association shall be a bank or banks or state or federal savings and loan associations or a member firm of the New York Stock Exchange with offices in Florida and as shall be designated from time to time by the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

7.13. **COMMINGLING OF FUNDS - PROHIBITED** - All funds shall be maintained separately in the Association's name provided that reserve and operating funds may be commingled for purposes of investment, but separate ledgers must be maintained for each account. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431.

7.14. **FINANCIAL REPORTS** - A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with F.S. 718.111(13) or in lieu thereof (if required by Rule 7D-23.004 Florida Administration Code) a complete set of financial statements. A copy of

the report or the financial statements shall be furnished to each member within 30 days after its completion and delivery to the Directors or at the annual meeting.

7.15. FIDELITY BONDING - The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount not less than \$50,000.00 for each person, but in no event less than the minimum required by the Condominium Act from time to time. The Association shall bear the cost of bonding.

8. PARLIAMENTARY RULES - A parliamentary procedure such as Robert's Rules of Order uniformly applied shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Articles of Incorporation or By-Laws of the Association or with the laws of the State of Florida.

9. BY-LAW AMENDMENTS - After turnover, amendments to the By-Laws shall be adopted in the following manner:

9.1. NOTICE of the subject matter of a proposed amendment shall be included in the notice of any meeting or the text of any written agreement at which or by which a proposed amendment is considered.

9.2. PROPOSAL OF AMENDMENTS - An amendment may be proposed by either a majority of the Directors or by Twenty-five Percent (25%) of the voting interests.

9.3. ADOPTION OF AMENDMENTS - A resolution or written agreement adopting a proposed amendment must receive approval of sixty-seven percent (67%) of the voting interests of the Association. Prior to turnover, amendments may be adopted by the Board alone.

9.4. **EFFECTIVE DATE** - An amendment when adopted shall become effective only after being recorded according to law.

9.5. **AUTOMATIC AMENDMENT** - These By-Laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium, the Association Articles of Incorporation, or the Condominium Act as amended from time to time.

9.6. **PROPOSED AMENDMENT FORMAT** - Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW NUMBER _____ FOR PRESENT TEXT."

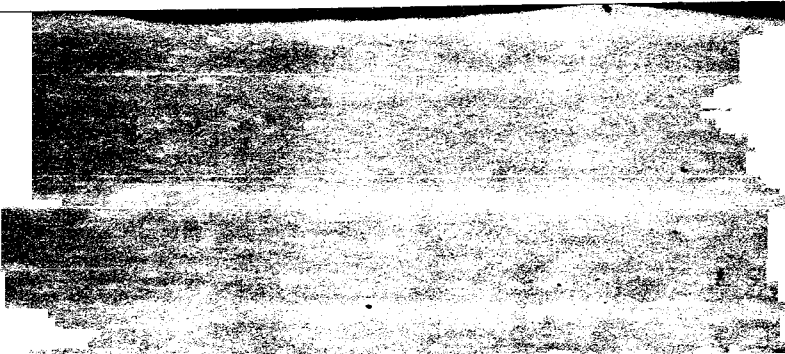
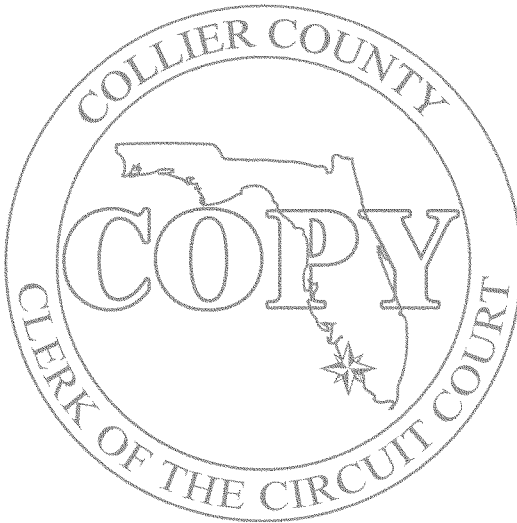
10. **VOTING ON FOUNDATION MATTERS** - Each Condominium Unit shall be entitled to one vote as a Class A Member of the Pelican Bay of Naples Foundation, Inc. as defined in that certain Declaration and General Protective Covenants dated May 7, 1979, as amended, not withstanding that the same Owner may own more than one Unit or that Units may be joined together and occupied by one Owner. In the event of a Joint ownership of a Condominium Unit, the vote to which that Unit is entitled may be exercised by one of such Joint Owners by agreement of the remainder of the Joint Owners; however, no split voting shall be permitted. The Secretary of the Condominium Association shall tabulate all votes on any Pelican Bay of Naples Foundation, Inc., matter and send the results of such tabulation to the Secretary of Pelican Bay of Naples Foundation, Inc.

11. **VOTING ON BAY COLONY MATTERS** - Voting on Bay Colony matters shall be as provided in the Bay Colony documents.

12. MANDATORY ARBITRATION OF DISPUTES - If unresolved, disputes between the Board and unit owners as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation.

The foregoing were adopted as the first By-Laws of BRIGHTON AT BAY COLONY CONDOMINIUM ASSOCIATION, INC. on this 14th day of April, 1994.

James R. [Signature]
PRESIDENT



BRIGHTON AT BAY COLONY, A CONDOMINIUM

EXHIBIT 'D'

RULES AND REGULATIONS

1. Passenger automobiles, sport/utility vehicles, mini-trucks, vans and motorcycles (used for personal transportation and not commercially) that do not exceed the size of one parking space may be parked in the areas provided for that purpose. Garage parking spaces are assigned and no unit may park more than two (2) vehicles in the garage unless additional spaces have been assigned to the unit. Commercial vehicles, trucks, campers, motor homes, trailers, boats and boat trailers are prohibited. Bicycles and mopeds shall be parked only in such areas as may be designated by the Directors. Vehicle maintenance, except car washing in designated areas, if any, is not permitted on the Condominium property. All vehicles must be currently licensed and no inoperable or unsightly vehicles may be kept on condominium property. Provided that the Developer shall be exempt from this regulation for vehicles which are engaged in any activity relating to construction, maintenance or marketing of units, as are commercial vehicles used by vendors of the Association while engaged in work at the condominium.

2. Recreational facilities will be used in such a manner as to respect the rights of others, and the Directors may regulate duration of use, hours of opening and closing and schedule their use.

3. No exterior radio, television or data reception antenna or any exterior wiring for any purpose may be installed without the written consent of the Directors.

4. To maintain harmony of exterior appearance no one shall make any changes to, place anything upon, affix anything to or exhibit anything from any part of the Condominium or Association property visible from the exterior of the building or from common elements without the prior written consent of the Directors. All curtains, shades, drapes and blinds shall be white or off-white in color or lined with material of these colors.

5. All common elements inside and outside the buildings will be used for their designated purposes only, and nothing belonging to unit owners, their family, tenants or guests shall be kept therein or thereon without the approval of the Directors, and such areas shall at all times be kept free of obstruction. Owners are financially responsible to the Association for damage to the common elements caused by themselves, their tenants, guests and family members.

6. One dog no more than 15 inches tall at the shoulder at maturity, or two cats and birds, tropical fish and other customary non-exotic (snakes are prohibited) quiet and inoffensive household pets not being kept or raised for commercial purposes shall be permitted upon the following conditions:

a. No pets shall be permitted in the pool area, leashed or unleashed.

b. Elsewhere on the common elements and Bay Colony common property, pets shall be under hand-held leash or carried at all times.

c. Messes made by pets must be removed by owners or handlers instantly. The Directors shall designate the portions of the property which shall be used to accommodate the reasonable requirements of unit owners who keep pets.

d. Pets that are vicious, noisy or otherwise unpleasant will not be permitted in the Condominium. In the event that a pet has become a nuisance or unreasonably disturbing in the opinion of the Board of Directors, written

notice shall be given to the owner or other person responsible for the pet and the pet must be removed from the condominium property within three (3) days.

e. Guests and tenants are not permitted to have pets.

f. The Board of Directors has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions.

7. Disposition of garbage and trash shall be only by use of receptacles approved by the Association or by use of the garbage disposal units. Specifically, trash placed in trash chutes must be securely bagged and may not contain breakable glass objects. Breakable glass objects must be left in the trash chute rooms for pickup by the housekeeper. Food and vegetable scraps are to be disposed of in the individual unit garbage disposals.

8. All persons occupying units other than the owners shall be registered with the Manager or other designate of the Association at or before the time of their occupancy of the unit. This includes renters and house guests.

Units may not be rented for periods of less than three (3) consecutive months nor more than two (2) times a year. A copy of these Rules and Regulations must be given to the tenants and guests by the unit owner, or the unit owner's agent. No unit may be permanently occupied by more persons than the number of bedrooms times two, nor may more persons, including guests, occupy a unit overnight than the number of bedrooms times two, plus two.

This regulation may not be amended in a way that would be detrimental to the sales of units by the developer so long as the developer holds units for sale in the ordinary course of business.

9. The Association shall retain a pass key to the units, and the unit owners shall provide the Association with a new or extra key whenever locks are changed or added for the use of the Association pursuant to its statutory right

to access to the units. Duplication of unit owners' keys to common element facilities is restricted in the interest of security. Such keys shall be duplicated only with the assistance of the Resident Manager.

10. Children shall be under the direct control of a responsible adult. Children under 12 may not use the pool, or waterfront areas unaccompanied by an adult nor shall they be permitted to run, play tag or act boisterously on the condominium property. Skateboarding, "Big Wheels", or loud or noxious toys are prohibited. Children may be removed from the common areas for misbehavior by or on the instructions of the Directors.

11. Loud and disturbing noises are prohibited. All radios, televisions, tape machines, compact disc players, stereos, singing and playing of musical instruments, etc. shall be regulated to sound levels that will not disturb others and if used at or in the vicinity of the pool shall be used only with earphones. No vocal or instrumental practice is permitted after 10:00 p.m. or before 9:00 a.m.

12. Use of barbecue grills shall only be allowed in areas designated as safe and appropriate by the Directors.

13. Illegal and immoral practices are prohibited.

14. Lawns, shrubbery or other exterior plantings shall not be altered, moved or added to without permission of the Association.

15. No glass of any kind shall be permitted in the pool area. Any liquid refreshments consumed near the pool area shall be in paper or plastic containers.

16. Laundry, bathing apparel, beach and porch accessories shall not be maintained outside of the units or limited common elements (balconies, terraces and cabanas), and such apparel and accessories shall not be exposed to view.

17. No nuisance of any type or kind shall be maintained upon the Condominium property.

18. Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the building or contents thereof, without the prior written consent of the Directors. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law or building code.

19. Persons moving furniture and other property into and out of units must use the designated access door into the condominium and the elevators designated by the Directors as service elevators and all such moving must be Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M. Moving vans and trucks used for this purpose shall only remain on condominium property when actually in use.

20. Repair, construction, decorating or re-modeling work shall only be carried on on Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M. and the rules for decorators and subcontractors set forth on Pages 9, 10 and 11 must be complied with.

21. These Rules and Regulations shall apply equally to owners, their families, guests, domestic help and lessees.

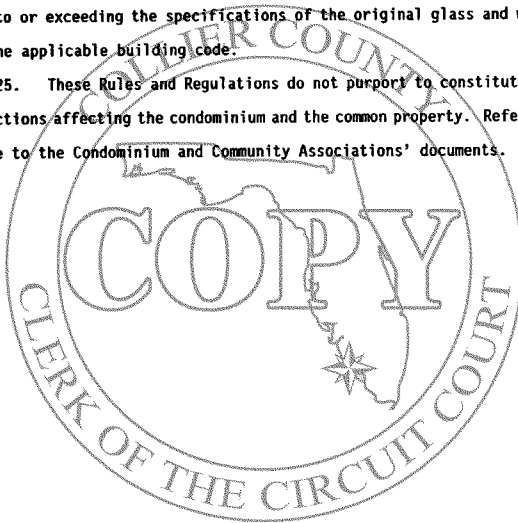
22. The Board of Directors of the Association may impose a \$100.00 fine for each violation of these Rules and Regulations or any of the condominium documents.

23. The Condominium and management staff are not permitted to do private work for unit owners, their families, tenants or guests while on duty. If both parties are agreeable, staff may assist such persons privately when off duty.

24. Hurricane shutters have been designed and will be installed by the developer for all balconies appurtenant to condominium units. These shutters meet or exceed standards set forth in the Standard Building Code (applicable to

Collier County) for buildings in the coastal zone and in excess of 60 feet in height. Non-balcony condominium unit windows are a special architect approved laminated glass and have been designed and installed to meet or exceed the wind load and windborne debris impact standards of the hurricane shutters. Consequently, such windows in the condominium units, as built, meet or exceed the requirements of the applicable building code for hurricane protection. For this reason and for the purpose of preserving the aesthetic appearance of the building, hurricane shutters shall not be installed on or over non-balcony windows in the condominium units. If such non-balcony windows in the condominium units are replaced, they must be replaced with laminated architectural glass equal to or exceeding the specifications of the original glass and which comply with the applicable building code.

25. These Rules and Regulations do not purport to constitute all of the restrictions affecting the condominium and the common property. Reference should be made to the Condominium and Community Associations' documents.



BRIGHTON AT BAY COLONY
GUEST SUITE PROCEDURES

1. Guest Suites are Common Elements for the use and convenience of Owners and their guests while the Owner is in residence, and are not for public use.
2. Reservations will be made on a first come - first serve basis. However, please be considerate of your fellow residents when making reservations well in advance, which may later need to be cancelled.
3. All reservations can be made through the Resident Manager's office by telephone, Fax, or in writing at 8231 Bay Colony Drive, Naples, Florida 33963. The Resident Manager will assist in authorizing access for your guest into Bay Colony and, where appropriate, the Bay Colony Club.
4. The Guest Suite Use Fee is currently \$60.00 per day "in season" (November 1 through April 30) and otherwise \$40.00 per day, and is subject to change without notice.
5. The maximum stay for guests will be seven (7) days unless specifically authorized by the Resident Manager.
6. Please notify the Resident Manager of any cancellation at least 24 hours prior to the arrival date.
7. Maid service will be provided on a daily basis unless otherwise requested.
8. Long distance telephone calls may be made by credit card or reverse charges at the security desk, or from the host unit owner's telephone.
9. The host unit owner will be responsible for any damage to the premises by the guest and for the guest's compliance with all applicable rules.

10. A copy of the Condominium Association's rules will be available in the Guest Suite.

11. Guests may pick up the key to the suite from the Resident Manager's office or, after 5:00 p.m., at the security desk. Guests should leave the key at either of the above places at the end of their stay.

12. A billing statement will be forwarded to the owner, after the guest has departed.

13. A registration form will be available at the time of check-in requesting the guest's name, address, telephone number and vehicles information.

14. These rules and procedures may be changed without notice.



BRIGHTON AT BAY COLONY

RULES FOR DECORATORS AND SUB-CONTRACTORS

1. The unit owner must preregister with the Resident Manager, 8231 Bay Colony Drive, Naples, Florida 33963 giving him the name, address, telephone number and fax number of the person who will be overseeing the work being done in the unit, whether that person be the interior decorator, the general contractor or the unit owner him or herself. (unit owner's representative).

2. Prior to commencing work, the unit owner's representative must preregister with the Resident Manager the names, addresses and phone numbers of all subcontractors who will be working in the unit, together with a schedule for their work.

3. The Resident Manager will coordinate with the unit owner's representative the issuance of temporary passes for access for decorators and contractors into Bay Colony through the construction gate located on Vanderbilt Beach Road.

4. Work hours are 8:00 a.m. - 5:00 p.m. Monday thru Saturday.

5. All sub-contractors must be licensed in Collier County and submit proof of same for the Resident Manager's files.

6. Sub-contractors must produce from their insurance carrier a certificate of insurance of general liability of no less than \$250,000 per occurrence and no less than \$500,000 aggregate. Also, they must provide proof of worker's compensation coverage for the Resident Manager's file.

7. All vehicles and persons will enter the building thru the parking garage at the North end of the building (maximum height of vehicle 6'8"). There they will be registered in by a security guard.

8. Sub-contractors will be allowed to unload their materials and equipment close to the elevators designated for the sub-contractors. Passenger elevators are not to be used at anytime. Elevator sizes are 5'x6'x9' tall.

9. After unloading sub-contractors must park their vehicles in the designated area of the garage or other specified areas.

10. Work preparations will not be allowed in the garage, i.e. mixing of paints, mud, grout, etc.

11. Trash chutes are not to be used. Nor is any trash to be left in units or hallways.

12. All trash and debris shall be hauled off by the sub-contractor on a daily basis unless a dumpster is specifically designated for their use.

13. Grout, paint, wall mud or any other material shall not be poured down building drains, sinks, toilets or bathtubs. Check with security guard for location of cleaning area.

14. Sub-contractors are not to use shopping carts owned by Brighton. (Bring your own).

15. Subcontractors shall not tamper with or hang extension cords from any of the sprinkler heads.

16. Breaks and lunches, if taken inside the building, should be confined to the owner's unit.

17. No radios will be allowed in the building unless used with headphones.

18. Access to the individual condominium units must be coordinated thru the owner, decorator or other owner's representative.

19. The hallways and lobby areas shall be kept free of any materials and trash.

20. Sub-contractors are not to wander around in areas other than the specific area or unit that they are assigned to.

21. The unit owner is responsible for his decorator's and sub-contractors' actions and inactions on the condominium property and in Bay Colony. Decorators and subs are on the premises at their own risk and agree to indemnify and hold harmless Brighton At Bay Colony Condominium Association, Inc., Bay Colony Community Association, Inc., and Westinghouse Communities of Naples, Inc. for any liability or damages which might arise in connection with their activities on the condominium property or in Bay Colony.

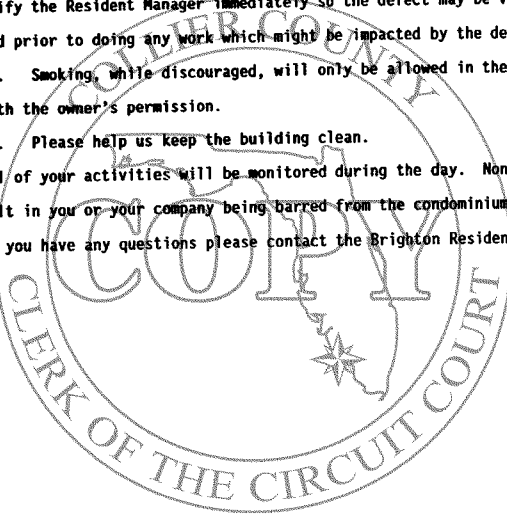
22. Should a decorator or sub-contractor discover a defect in a unit they must notify the Resident Manager immediately so the defect may be verified and corrected prior to doing any work which might be impacted by the defect.

23. Smoking, while discouraged, will only be allowed in the individual units with the owner's permission.

24. Please help us keep the building clean.

All of your activities will be monitored during the day. Non-compliance may result in you or your company being barred from the condominium property.

If you have any questions please contact the Brighton Resident Manager.



**RULES FOR UNIT OWNER PARTICIPATION
IN BOARD OF DIRECTORS MEETINGS, A BUDGET
COMMITTEE MEETING AND A MEETING OF ANY
COMMITTEE AUTHORIZED TO TAKE ACTION ON BEHALF
OF THE BOARD; AND OF THE LOCATION FOR POSTING NOTICES OF MEETINGS**

A. THE RIGHT TO SPEAK:

1. The maximum extent practical, the posted Board meeting agenda for each meeting shall list the substance of the matters and actions to be considered by the Board.

2. Roberts Rules of Order (latest edition) shall govern the conduct of the Association meeting when not in conflict with the Declaration of Condominium, the Articles of Incorporation or the By-laws.

3. After each motion is made and seconded by the Board members the meeting Chairperson will permit unit owner participation regarding the motion on the floor, which time may be limited depending on the complexity and effect on the Association.

4. Unit owner participation will not be permitted after reports of officers or committees unless a motion is made to act upon the report, or the Chair determines that it is appropriate or is in the best interest of the Association.

5. A unit owner wishing to speak must first raise his or her hand and wait to be recognized by the Chair.

6. While a unit owner is speaking he or she must address only the Chair, no one else is permitted to speak at the same time.

7. A unit owner may speak only once for not more than three (3) minutes and only on the subject or motion on the floor.

8. The Chair may, by asking if there be any objection and hearing none, permit a unit owner to speak for longer than three (3) minutes, or to speak

more than once on the same subject. The objection, if any, may be that of a Board member only and if there is an objection then the question will be decided by a vote of the Board.

9. The Chair will have the sole authority and responsibility to see to it that all unit owner participation is relevant to the subject or motion on the floor.

B. THE RIGHT TO VIDEO OR AUDIOTAPE:

1. The audio and video equipment and devices which unit owners are authorized to utilize at any such meeting must not produce distracting sound or light emissions.

2. Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting in a location that is acceptable to the Board or the Committee.

3. Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

4. At least 24 hours advance written notice shall be given to the Board by any unit owner desiring to utilize any audio and/or video equipment to record a meeting.

C. ALL NOTICES OF MEMBERSHIP, DIRECTORS AND COMMITTEE MEETINGS AT WHICH UNIT OWNERS ARE ENTITLED TO PARTICIPATE WILL BE POSTED IN THE LOCKED, GLASS FRONTED BULLETIN BOARD IN THE MAIL ROOM.

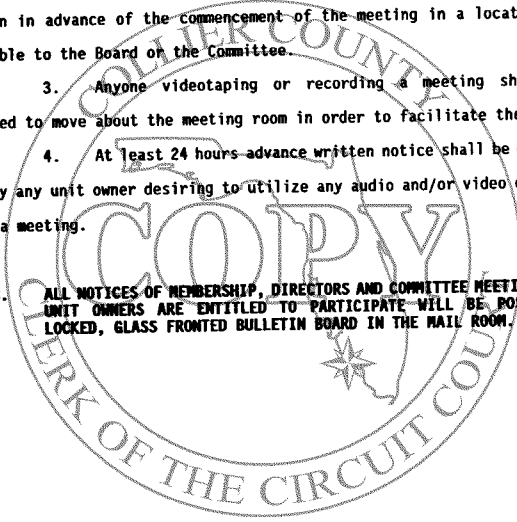


EXHIBIT "E"

Description of a Portion of Tract B,
Pelican Bay Unit Eight, Plat Book 15, Pages 27-29,
Collier County, Florida

Commencing at the northeasterly corner of Tract B, Pelican Bay Unit Eight as recorded in Plat Book 15, pages 27 through 29 inclusive; thence South 28°52'07" East 11.40 feet; thence South 42°36'04" East 127.14 feet; thence South 41°33'19" East 193.71 feet; thence South 48°26'41" West 166.72 feet to the Point of Beginning of the parcel herein being described; thence 29.43 feet along the arc of a circular curve concave northwesterly, having a radius of 165.00 feet, through a central angle of 10°13'11" and subtended by a chord which bears South 75°00'26" West 29.39 feet; thence South 80°07'02" West 94.61 feet; thence South 09°52'58" East 157.48 feet; thence South 64°02'24" West 342.75 feet to the State of Florida, Department of Natural Resources and Collier County Coastal Construction Control Line dated July 29, 1980; thence along said Coastal Construction Control Line, North 09°52'58" West 340.01 feet; thence North 80°07'02" East 266.49 feet; thence North 09°52'58" West 6.28 feet; thence 6.09 feet along the arc of a circular curve concave southerly, having a radius of 4.31 feet, through a central angle of 81°05'40" and subtended by a chord which bears North 30°39'37" East 5.60 feet; thence North 71°12'12" East 30.80 feet; thence 11.24 feet along the arc of a circular curve concave southerly, having a radius of 30.00 feet, through a central angle of 21°28'16" and subtended by a chord which bears South 22°09'41" West 11.18 feet; thence 126.57 feet along the arc of a circular curve concave southerly, having a radius of 69.00 feet, through a central angle of 105°06'11" and subtended by a chord which bears North 85°26'54" East 109.56 feet; thence South 42°00'00" East 69.74 feet; thence South 09°52'58" East 40.70 feet to the Point of Beginning;

containing 2.55 acres of land more or less;
subject to easements and restrictions of record;
bearings are based on the north line of Tract E, Pelican Bay Unit Eight, as being South 80°08'20" East.

INGRESS, EGRESS EASEMENT

An INGRESS, EGRESS EASEMENT over, under and across all that part of Tract "B", Pelican Bay, Unit Eight, P.B. 15, Pages 27-29, COLLIER COUNTY, FLORIDA, being more particularly described as follows:

Commencing at the northeasterly corner of said Tract "B", thence South 28°52'07" East, a distance of 11.40 feet; thence South 42°36'04" East, a distance of 127.14 feet; thence South 41°33'19" East, a distance of 196.17 feet; thence South 48°26'41" West, a distance of 40.63 feet to the POINT OF BEGINNING;

said point being on the arc of a circular curve, concave Southerly, whose radius point bears South 01°17'05" West 30.00 feet;

thence Westerly along the arc of said curve through a central angle of 43°17'05", an arc distance of 22.66 feet; thence South 48°00'00" West, a distance of 42.79 feet to the beginning of a circular curve, concave Northwesterly, having a radius of 150.00 feet;

thence Southwesterly along the arc of said curve through a central angle of 20°54'38", an arc distance of 54.74 feet to a non-tangent line;

thence North 09°52'58" West, a distance of 23.46 feet thence North 42°00'00" West, a distance of 69.74 feet

to the beginning of a circular curve, concave Southerly, having a radius of 69.00 feet, thence Northwesterly along the arc of said curve through a central angle of 105°06'11", an arc distance of 126.57 feet;

to a point of compound curvature, concave Easterly, having a radius of 30.00 feet;

thence Southwesterly along the arc of said curve through a central angle of 21°28'16", an arc distance of 11.24 feet to a non-tangent line;

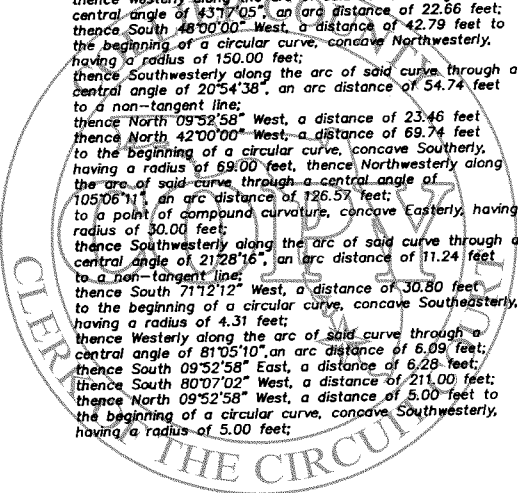
thence South 71°12'12" West, a distance of 30.80 feet to the beginning of a circular curve, concave Southeasterly, having a radius of 4.31 feet;

thence Westerly along the arc of said curve through a central angle of 81°05'10", an arc distance of 6.09 feet;

thence South 09°52'58" East, a distance of 6.28 feet;

thence South 80°07'02" West, a distance of 211.00 feet;

thence North 09°52'58" West, a distance of 5.00 feet to the beginning of a circular curve, concave Southwesterly, having a radius of 5.00 feet;



thence Northerly along the arc of said curve through a
 central angle of $90^{\circ}00'00''$, an arc distance of 7.85 feet;
 thence South $80^{\circ}07'02''$ West, a distance of 15.00 feet;
 thence North $09^{\circ}52'58''$ West, a distance of 24.00 feet;
 thence North $80^{\circ}07'02''$ East, a distance of 225.75 feet to
 the beginning of a circular curve, concave Northwesterly,
 having a radius of 50.00 feet;
 thence Easterly along the arc of said curve through a
 central angle of $42^{\circ}06'40''$, an arc distance of 36.75 feet
 to a point of reverse curvature, concave Southeasterly,
 having a radius of 93.00 feet;
 thence Northeasterly along the arc of said curve through a
 central angle of $22^{\circ}08'51''$, an arc distance of 35.95 feet
 to a point of reverse curvature, concave Northwesterly,
 having a radius of 30.00 feet;
 thence Northeasterly along the arc of said curve through a
 central angle of $70^{\circ}02'02''$, an arc distance of 36.67 feet;
 thence North $09^{\circ}52'49''$ West, a distance of 22.39 feet;
 thence North $80^{\circ}07'11''$ East, a distance of 24.00 feet;
 thence South $09^{\circ}52'49''$ East, a distance of 22.39 feet to
 the beginning of a circular curve, concave Northeasterly,
 having a radius of 30.00 feet;
 thence Southerly along the arc of said curve through a
 central angle of $70^{\circ}02'02''$, an arc distance of 36.67 feet;
 to a point of reverse curvature, concave Southwesterly,
 having a radius of 93.00 feet;
 thence Easterly along the arc of said curve through a
 central angle of $35^{\circ}37'28''$, an arc distance of 57.82 feet
 to a point of reverse curvature, concave Northerly, having a
 radius of 20.00 feet;
 thence Southeasterly along the arc of said curve through
 a central angle of $87^{\circ}42'37''$, an arc distance of 30.62
 feet;
 thence North $48^{\circ}00'00''$ East, a distance of 40.52 feet to
 the beginning of a circular curve, concave Northwesterly,
 having a radius of 30.00 feet;
 thence Northeasterly along the arc of said curve through a
 central angle of $41^{\circ}48'10''$, an arc distance of 21.89 feet
 to a non-tangent line;
 thence South $42^{\circ}00'00''$ East, a distance of 99.80 feet to
 the POINT OF BEGINNING;

Containing 0.52 of an acre of land, more or less;
 subject to easements and restrictions of record.

CLERK OF THE CIRCUIT COURT

EXHIBIT "F"

BRIGHTON AT BAY COLONY, A CONDOMINIUM
PERCENTAGES OF OWNERSHIP

The unit owners shall own the following percentages of the common elements and common surplus, and shall be obligated for the same percentages of the common expenses - which percentages have been calculated upon the square footage of each type of unit in relation to the total square footage of all the units in the condominium.

Unit types 01 through 04 are the last two digits in the individual unit identification numbers appearing on Exhibit "B", the Condominium Plot Plan.

<u>No. of Units</u>	<u>Unit Type</u>	<u>Unit Percentage</u>	<u>Total Percentages</u>
18 Residence	Type 01	1.362	24.516
18 Residence	Type 02	1.114	20.052
17 Residence	Type 03	1.367	23.239
18 Residence	Type 04	1.220	21.960
1 Residence	Type PH2101	2.538	2.538
1 Residence	Type PH2102	2.568	2.568
1 Residence	Type PH2201	2.536	2.536
1 Residence	Type PH2202	2.591	2.591
		TOTAL	100.000%

