

3183616 OR: 3291 PG: 0048

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
05/14/2003 at 11:41AM DWIGHT B. BROCK, CLERK  
RRC FEB 002.50

Retn:  
DEMIAN M KRUCHTEN LLC  
2662 AIRPORT RD S  
NAPLES FL 34112

## **OLDE MARCO, A CONDOMINIUM**

THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A COMMERCIAL CONDOMINIUM UNIT.

THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, AL EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

**OLDE MARCO, A CONDOMINIUM**

**THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT,**

**THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.**

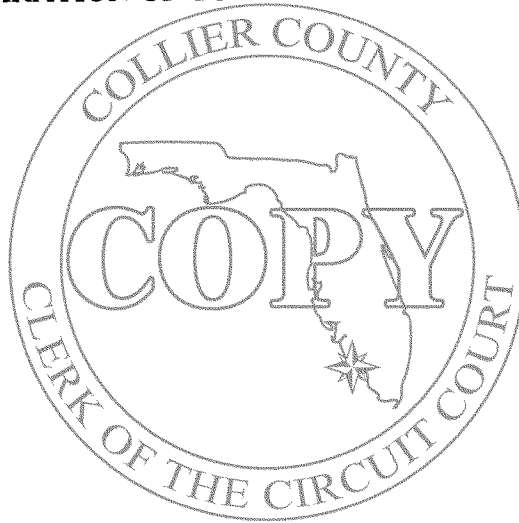
**ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE**

**REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS, (OFFERING CIRCULAR), AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.**



**EXHIBIT 1**

**FORM OF DECLARATION OF CONDOMINIUM OF OLDE MARCO, A CONDOMINIUM**



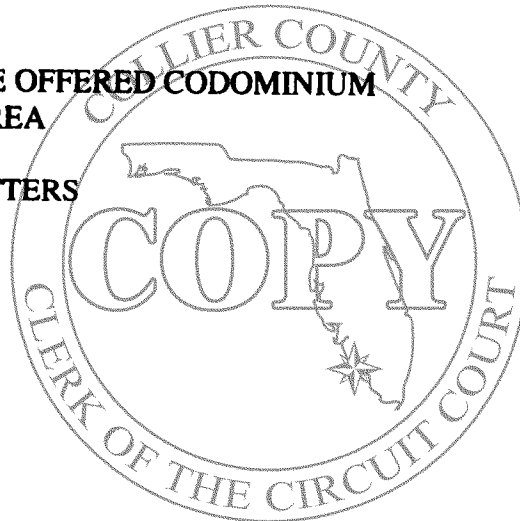




## TABLE OF CONTENTS

<b>I.</b>	<b>GENERAL INFORMATION</b>	<b>7</b>
1.1	INTRODUCTION TO OFFERING CIRCULAR	7
1.2	CONCEPT OF CONDOMINIUM OWNERSHIP	7
1.3	PLAN OF AND FOR OF OLDE MARCO, A CONDOMINIUM	7
1.4	DEVELOPER	8
<b>II.</b>	<b>DESCRIPTION OF UNITS AND COMMONLY USED FACILITIES</b>	<b>8</b>
2.1	INFORMATION REGARDING UNITS	8
2.2	RECREATIONAL AND OTHER FACILITIES	8
2.3	THE COMMERCIAL UNITS	9
<b>III.</b>	<b>DISCUSSION OF CONDOMINIUM DOCUMENTS AND RESTRICTIONS CONTAINED THEREIN</b>	<b>9</b>
3.1	DECLARATION OF CONDOMINIUM AND RULES AND REGULATIONS - RESTRICTIONS CONTAINED THEREIN	9
3.1.1	OBLIGATION OF MAINTENANCE AND REPAIR	9
3.1.2	RESTRICTION ON SALES, CONVEYANCES, LEASES AND MORTGAGING OF UNITS	11
3.1.3	RIGHT OF DEVELOPER TO LEASE UNITS AND OTHER RIGHTS	12
3.1.4	RESTRICTIONS ON PARKING, PETS AND CHILDREN	13
3.1.5	EASEMENTS	13
3.2	ARTICLES OF INCOPORATION OF OLDE MARCO, A CONDOMINIUM	14
3.3	BY-LAWS OF OLDE MARCO, A CONDOMINIUM	14

3.4	MISCELLANEOUS DOCUMENTS	15
3.5	UTILITY SERVICES	15
IV.	ESTIMATED CLOSING EXPENSES; EXPENSES OF OWNERSHIP; PROPOSED BUDGETS	15
4.1	ESTIMATED CLOSING EXPENSES	15
4.2	METHOD USED FOR ALLOCATING EXPENSES	16
4.3	BUDGETARY MATERIALS	17
4.4.	WORKING CAPITAL CONTRIBUTIONS	17
4.5	LIENS FOR NONPAYMENT	18
V.	MANAGEMENT OP THE OFFERED CODOMINIUM AND THE COMMON AREA	19
VI.	MISCELLANEOUS MATTERS	19



**SCHEDULE OF EXHIBITS  
TO OFFERING CIRCULAR FOR OLDE MARCO, A CONDOMINIUM**

1. FORM OF DECLARATION OF CONDOMINIUM OF OLDE MARCO, A CONDOMINIUM
2. SITE PLAN, PLOT PLANS AND GRAPHIC DESCRIPTION OF IMPROVEMENTS FOR OLDE MARCO, A CONDOMINIUM; GRAPHIC DESCRIPTION OF FLOOR PLANS FOR OFFERED CONDOMINIUM
3. ARTICLES OF INCORPORATION OF OLDE MARCO CONDOMINIUM ASSOCIATION, INC.
4. BY-LAWS OF OLDE MARCO CONDOMINIUM ASSOCIATION, INC.
5. RULES AND REGULATIONS OF OLDE MARCO CONDOMINIUM ASSOCIATION, INC.
6. ESTIMATED TWELVE-MONTH OPERATING BUDGET FOR OLDE MARCO CONDOMINIUM ASSOCIATION, INC.
7. FORM OF SPECIAL WARRANTY DEED
8. FORM OF AGREEMENT FOR PURCHASE AND SALE
9. ESCROW AGREEMENT
10. AGREEMENT FOR MANAGEMENT OF OLDE MARCO CONDOMINIUM ASSOCIATION, INC.

Prospectus/Offering Circular  
OLDE MARCO, A CONDOMINIUM

**SUMMARY OF MATTERS REQUIRED TO BE IN  
CONSPICUOUS TYPE UNDER CONDOMINIUM ACT:**

**THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS  
TO BE CONSIDERED IN ACQUIRING A COMMERCIAL CONDOMINIUM UNIT.**

**THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE A  
"PROSPECTIVE PURCHASER" SHOULD REFER TO ALL REFERENCES, ALL  
EXHIBITS HERETO, THE CONTRACT DOCUMENTS AND SALES MATERIALS.**

**ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY  
STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS  
PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT  
REPRESENTATIONS.**

**THERE IS NO LAND LEASE ASSOCIATED WITH OLDE MARCO, CONDOMINIUM  
AND, ACCORDINGLY, FEE SIMPLE INTERESTS SHALL BE CONVEYED TO EACH  
OWNER OF A UNIT ("UNIT OWNER").**

**THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION  
THAT HAS BEEN FORMED TO OPERATE THE OFFERED CONDOMINIUM.**

**THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.**

**UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

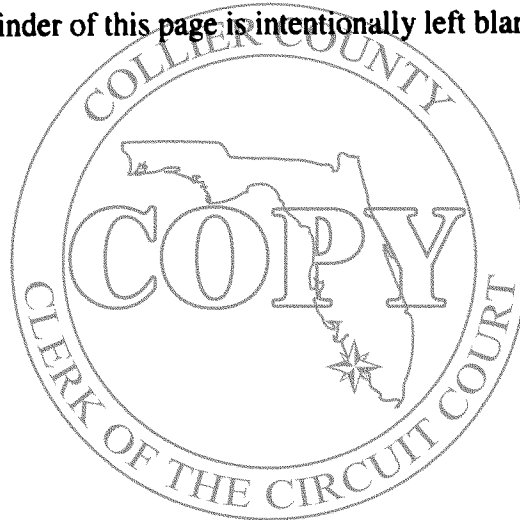
**Each UNIT is a suite of rooms to be used as part of resort family vacations and/or  
tenant/guest accommodations. The suites of rooms are rented as part of the OLDE MARCO, A  
CONDOMINIUM on a daily basis. The owner is permitted to rent out the owner's unit as a suite  
through services of any reputable, properly licensed rental agent.**

**OLDE MARCO, A CONDOMINIUM is dedicated as a commercial condominium. The  
governmental zoning for the property and the dedication do not permit the owners of units to  
occupy any unit (Unit) as a residence. The condominium units are required to be used for  
commercial resort purposes the only exception being that an owner, his family, guests, invitees,  
lessees and/or employees may occupy the unit for vacation or business purposes by making prior  
reservations with the management company engaged.**

The Association has the right to approve each sale, lease or transfer of a Unit. For further details, please refer to the Declaration of Condominium.

Marco Cat, LLP or any other reputable, licensed rental agent may make available to each Unit Owner a property management service that will include the care and upkeep of the Unit and handle rental of the Unit on behalf of the Unit Owner. Marco Cat, LLP's property management program is not connected to the Unit sales program and no buyer is required to use Marco Cat's property management services.

(The remainder of this page is intentionally left blank.)



## GENERAL INFORMATION

### I. 1 Introduction to Offering Circular.

This Offering Circular has been prepared by Marco Cat, LLP, a Minnesota limited liability partnership ("Developer") to offer for sale commercial (not residential) condominium parcels ("Units") in the condominium to be known as OLDE MARCO, A Condominium (the "Offered Condominium"), located at 100 Palm Street, Marco Island, Florida, Collier County, Florida. The Offered Condominium consists of two five-story buildings (excluding the fifth floor) and one "water house", containing a total of fifty-one (51) Units, plus storage spaces to be retained by Developer, which shall house support facilities (laundry, linens, etc...) for the Resort. A site plan, plot plan and graphic description of improvement for the Offered Condominium are included as Exhibit 2 to the Offering Circular. The following discussion is intended to inform you as a purchaser at OLDE MARCO, A CONDOMINIUM.

### 1.2 Concept of Condominium Ownership.

The concept of condominium ownership, as employed at OLDE MARCO, A CONDOMINIUM means that the owner (Unit Owner) of a Unit in the Offered Condominium acquires the Unit in fee simple, together with an undivided interest in the common areas of the Offered Condominium which are used or may be used in common by other Unit Owners and which constitute "Common Elements"

Thus, the Unit Owner owns the Unit in many ways similar to the manner in which an investor owns a single family home and lot or a real estate business building and lot. A mortgage on any unit is the responsibility of that Unit Owner and no other Unit is subject to the lien of any mortgage placed on any other Unit. Further, under present law, each Unit is taxed as a separate parcel for real estate tax purposes and a Unit Owner will not be responsible if any of his/her/its neighbors fail to pay the taxes due on their Unit(s). Each Unit is conveyed to a Unit Owner by separate Special Warranty Deed, the form of which is included as Exhibit 7 to this Offering Circular. It is important to note that:

THE OFFERED CONDOMINIUM IS BEING CREATED AND SOLD AS A FEE SIMPLE INTEREST AND NOT AS LEASEHOLD.

### 1.3 Plans of and for OLDE MARCO, A CONDOMINIUM

Each Unit contains two bedrooms, a living room, dining space, kitchen area and two bathrooms. Each Unit will be completely furnished; furnishings will be included in the sales price. The furnishings will include the furnishing of all rooms, including appliances, (appliances may be excluded at purchasers request at time of purchase) floor and window treatments, bedspreads, artwork, and a set of house wares.

The Developer, at its sole expense, will supply the furniture, supplies and equipment for the Resort Support Facility Units, which shall be retained by Developer. The Developer will provide personnel to staff all aspects of the operation of the resort, including housekeeping services, advertising, reservation, registration and accounting services for each Unit entered into and operated under the management of Developer as rental agent: it is not required that any Unit be operated and managed by Developer, and each Unit Owner may so choose any other third-party, reputable, licensed rental agent as their rental agent.

The expenses to be paid by a Unit Owner for the operation and maintenance of the condominium common elements will be charged to each Unit Owner by the Olde Marco Condominium Association, Inc.

#### 1.4 The Developer.

"The developer of the offered condominium is Marco Cat, LLP, a Minnesota limited liability partnership, formed in accordance with the laws of the State of Minnesota. Its main offices are located at 100 Palm Street, Marco Island, Florida. Marco Cat has developed and operated a family-tourist resort property in Southwest Florida, located on the Olde Marco site. Marco Cat's principals have a long history of building successful businesses across the United States and are directly involved on a day-to-day basis with the operations of the Olde Marco Island Inn and Suites.

## II. DESCRIPTION OF UNITS AND COMMONLY USED FACILITIES

### 2.1 Information Regarding Units.

The site plan showing the boundaries for each of the Units, and drawings of the number of Units in the Offered Condominium, and the bedrooms and baths contained in each Unit, are included as part of Exhibit 2 to this Offering Circular.

There are fifty-one (51) Units contained in two five-story buildings. (the air space of the fifth floor of each building is excluded from, and owned separately from, this condominium.) Building one has 27 Units and Building 2 has 24 Units. All 51 Units are two bedroom, two bathroom suites. Each building has Resort Support Facility Units which shall be retained by Developer and used in operation of its hotel and rental programs.

### 2.2 Recreational and Other Facilities.

Developer has granted the Condominium easements for recreational facilities to the Condominium and each Owner of a Unit, and his family, guests, invitees, lessees or employees, shall share in the right to use these recreational facilities. The specific rights and obligations of such usage is more clearly spelled out in Section 4 of the Declaration of Condominium and the Exhibits thereto.

Developer, at its own expense, and at no expense to Unit Owners, (except as outlined in the initial Estimated Budget categories in Exhibit 6 herein) shall install equipment in Resort Support Facility Units and will also install equipment for pool, for use by occupants of Units.

### 2.3 Resort Support Facility Units.

The costs of maintenance and upkeep of the Resort Support Facility Units on each floor, to be retained by the Developer, shall be born solely by the Developer.

## III. DISCUSSION OF CONDOMINIUM DOCUMENTS AND RESTRICTIONS CONTAINED THEREIN

[This Section is devoted to a discussion of the condominium documents for the Offered Condominium and attempts to highlight certain matters contained therein. This Section should not serve as a substitute for the reading of the condominium documents.]

### 3.1 Declaration of Condominium and Rules and Regulations Restrictions Contained Therein

A declaration of condominium ("Declaration") is the document which, when recorded by Developer amongst the Public Records of Collier County, Florida, will submit the Offered Condominium to condominium ownership. The Offered Condominium will be submitted to condominium ownership pursuant to its own Declaration. The proposed form of Declaration is included as Exhibit 1 to this Offering Circular. The Survey that is to be recorded as an Exhibit to the Declaration describes the dimensions of the buildings, units and the common elements in such condominium. A copy of the Site Plan for the Offered Condominium is included as Exhibit 2 to this Offering Circular. The Declaration also sets forth the fractional interest in the Common Elements, and "Common Expenses" and "Common Surplus" (as those terms are defined in the Declaration) appurtenant to each unit in such offered condominium. Article 6 the Declaration sets forth that each unit has one (1) vote in the Association and Articles 8 and 10 describe the obligations of maintenance and repair. The obligations to pay Common Expenses for the operation and maintenance of the Offered Condominium and provisions for assessments are set forth in Articles 13 and 14 of the Declaration. The Declaration has no stated length of term and can be terminated only as set forth in Article 21 therein and as elsewhere provided for in the condominium documents. There is set forth in the following Sections 3.1 certain restrictions.

#### 3.1.1 Obligation of Maintenance and Repair.

The obligation of maintenance and repair for the "Condominium Property" (as defined in the Declaration) of the Offered Condominium is that of the Unit Owner, Owner, as set forth in the Declaration. Articles 8 and 9 of the Declaration provide that, except for those portions of the Unit to be maintained by the Association, the Unit Owner is responsible to maintain in good condition



and to repair which would jeopardize or impair the safety or soundness of the Offered Condominium, the Common Elements or the architectural design of the Offered Condominium. The Association is responsible to maintain, repair and replace all of the Common Elements (Except for the

Facilities located within a Unit serving only said Unit) and all exterior surfaces of the Offered Condominium. Plumbing and electrical repairs within a Unit shall be the financial obligation of the Unit Owner, unless such plumbing or wiring is part of the Common Elements or serves Units other than the Unit in which it is located. The maintenance and repair of air conditioning equipment and exhaust fans serving a Unit is the responsibility of the Unit that they serve. Additional obligations of maintenance by the Association and Unit Owners are set forth in the Declaration. The expenses of maintaining and repairing the Offered Condominium are borne by the Unit Owners of that Offered Condominium.

The Board of Directors of the Association (the "Board") shall purchase liability Insurance for the purpose of providing liability insurance coverage for the Common Elements. Such cost of liability insurance may be shared with the Marco Cat Penthouses Condominium Association, Inc., if an agreeable arrangement between the parties is reached. Pursuant to Article 15 of the Declaration, Association shall obtain casualty insurance coverage for the Condominium Property of the Offered Condominium, which Condominium Property includes the Units. However, certain coverage as discussed herein below, in addition to that provided by the Association, shall be the responsibility of the Unit Owner.

In the event insurance proceeds are insufficient to cover a loss to any improvements within any of the Units and/or improvements within the Common Elements of the Offered Condominium, the Unit Owners of such condominium shall be responsible for the deficiency in the manner set forth in Article 16 of the Declaration. Each Unit Owner shall be responsible for purchasing casualty insurance to provide coverage in such event. Each Unit Owner is also responsible for the purchase of casualty insurance, including water damage for any improvements in the Unit Owner's Unit not insured by the Association policy and for all the Unit Owner's personal property. In addition, each Unit Owner is responsible for purchasing liability insurance for the acts and omission of the Association in relation to the use of the Common Elements (liability therefore may be imposed pursuant to Section 718.119 of the Condominium Act). Finally, each Unit Owner shall be responsible for purchasing liability insurance for accidents occurring in his own Unit or for accidents or damages for which the Unit Owner is liable, including water damage to other Units or Common Elements caused by Unit Owner's act or failure to act and for any additional liability insurance the Unit Owner so desires.

Each Unit Owner should contact his insurance agent to determine the extent such personal coverage is advisable in addition to the coverage provided by the Association. Please refer to the Declaration and the Notes to the Budget for the Association (Exhibit 6 hereto) for further details.

### 3.1.2 Restriction on Sales, Conveyances, Leases and Mortgaging of Units.

**THE SALE, LEASE OR TRANSFER OF YOUR UNIT IS RESTRICTED OR CONTROLLED.**

OLDE MARCO is operated as a resort and each Unit is intended for commercial rental on a daily basis and cannot be used as a residence by any owner, his family, guests, invitees, lessees or employees. The sale, conveyance, lease and mortgaging of Units are subject to the restrictions set forth the terms of Declaration, which are established in order to assure a community of congenial Unit Owners and to protect the value of the Units. Under no circumstances may the provisions therein be used to foster discrimination or to deny the purchase of any unit on account of a person's age, sex, race, religion, creed or place of national origin. No Unit Owner may convey, transfer or dispose of his Unit or interest therein by sale, lease (or sublet) or transfer (except to the spouse, children or parents of such Unit Owner) without the approval of the Board. The Unit Owner must give proper notice to the Board of Unit Owner's intention to sell, lease or transfer his Unit, together with the name and address of the intended purchaser, Lessee or transferee made the terms of such purchase, lease or transfer. Within thirty (30) days after receipt of the notice, the Association, by its Board, shall either approve the sale. Failure of the Board to notify the Unit Owner within thirty (30) days after the notice is received shall constitute approval. For further details, please refer to the Declaration.

No Unit Owner may mortgage his Unit without the approval of the Association, except to a life Insurance company doing business in Florida and approved by the Commissioner of Insurance of the State of Florida; or Federal or State Savings and Loan Association or Building and Loan Association or commercial bank doing business in the State of Florida, any "Secondary Mortgage Market Institution, Including the Federal National Mortgage Association, Federal Home" Loan Mortgage Corporation, Government National Mortgage Association, Federal Home Administration, and Veterans Administration and such other Secondary Mortgage Market Institutions as the Board shall approve in writing which may acquire a first mortgage on a Unit; or a mortgage banking company licensed to do business in the State of Florida or any subsidiary thereof Licensed or qualified to make mortgage loans in the State of Florida; or a Real Estate Investment Trust authorized to transact business in the State of Florida; or a national banking association chartered under the laws of the United States of America; or Developer, or a mortgagee which has loaned money to Developer in order to enable Developer to construct improvements upon any part of the Condominium to be administered by the Association; or the seller of a Unit who takes back a purchase money mortgage to secure a portion of the purchase price. (These are the "Approved Mortgagees" referred to in the Declaration.) The approval of any other mortgagee may be upon conditions determined by the Board and approval may be withheld in the sole discretion of the Board.

An Approved Mortgagee (other than a Unit Owner who is an Approved Mortgagee solely because the Unit Owner sells the Unit and takes back a purchase money mortgage to secure a

portion of the purchase price) holding a mortgage on a Unit, upon becoming the owner of a Unit through foreclosure or by deed in lieu of foreclosure, or whomsoever shall become the acquirer of title to a Unit at the foreclosure sale by an Approved Mortgagee (other than a Unit Owner who is an Approved Mortgagee solely because the Unit Owner sells the Unit and takes back a purchase money mortgage to secure a portion of the purchase price) shall have the unqualified right to sell, lease or otherwise transfer said Unit, including the fee ownership thereof and/or to mortgage said Unit without prior offer to or approval of the Association, as long as such action is in conformity with applicable zoning and Condominium documentation terms.

As set forth in the Declaration, the Units shall be used as commercial suites and/or other compatible business uses. No Unit may be occupied as a residence and only transients may be accommodated in the Units (except the owner and owners family, guest, invitees, lessees or employees, may occupy the Unit Owner's unit(s) for limited times for non-permanent residence occupancy, such as vacations and/or business meetings as provided for an limited by in the Declaration of Condominium and elsewhere in the Condominium documents; the Unit Owner's use requires the payment of "resort" overhead during occupancy, including, but not limited to, Unit housekeeping).

### 3.1.3 Rights of Developer to Lease Units and Other Rights.

Although Developer does not have a present plan to sell Units subject to a lease, it reserves this right. If so, the lease will contain provisions normally found in a commercial resort unit lease. The provisions and term of the lease, if any, will be subject to market conditions.

### UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE

The Developer has also reserved the right, as set forth in the Declaration, for itself, or its nominees or designees, to enter into and transact on the Condominium Property any business necessary to consummate the sale, lease or encumbrance of Units or real property, including the right to maintain models, sales areas and a sales office, place signs, employ sales personnel, use the Common Elements and show Units. In addition, Developer has reserved the right as set forth in the Declaration to make repairs and improvements to the Condominium Property and to engage in construction and inspection activities of the Condominium Property and the Common Properties. The Developer has reserved the right to assign its various rights in whole or in part to other parties. All Units will be available for rental on a day-to-day basis as resort suites and the Developer will retain the income from the rental of the units until the units are sold.

### 3.1.4 Restrictions on Parking, Pets and Children.

All parking will be part of the Common Elements of OLDE MARCO and will be under the control of the Association. It is intended that there will not be any assignment of parking to any particular Unit. It is intended that parking will only be assigned for the purpose of handicapped accessibility and for the purpose of public transportation and as that granted as easements to third parties. Please refer to Article 4 of the Declaration.

The Condominium Association shall from time to time, make rules relating to the housing and supervision of pets and children. Such rules in general will be for the purpose of providing for the Safety and the peace and tranquility of children and the other occupants, as well as the public in general. Rules and regulations relating to pets and children will be posted on the property. There will be no rule that prohibits children from occupying Resort Units, provided all children are under the supervision of a guardian or parent. Absolutely no pets are allowed on or about the Property, including exclusion from each and all Units. Please refer to Article 18 of the Declaration and the Rules and Regulations (Exhibits 1 and 5, respectively).

### 3.1.5 Easements.

Perpetual, non-exclusive and exclusive easements have been established across, over, under and upon the walks and other rights-of-way of the Offered Condominium so as to provide a means of ingress to and egress from the Common Properties and Common Elements in favor of the Association, Developer, Unit Owners and other third parties for their use and the use of their family members, guests, invitees, lessees or employees, successors and assigns. The Declaration also imposes such easements on the Offered Condominium (see Article 4 of the Declaration). The Condominium Property as well as the Common Properties is owned subject to the aforesaid easements.

The Condominium Property shall be subject to a reciprocal cross-easement for vehicular and pedestrian ingress and egress, parking and utilities between the Association, the Developer, Owners of Marco Cat Penthouses, a Condominium, or the Developer's and/or Marco Cat Penthouses, a Condominium's successors or assigns. (See Section 4 of the Declaration.) However, certain exclusive easements have been granted to third parties. (See Section 4 of the Declaration.)

(Intentionally left blank.)

Developer has reserved the right under Article 4 of the Declaration to impose upon the Common Elements of the Condominium Property such easements, including those for the installation and repair of facilities, including utilities, as Developer deems to be in the best interest of the Offered Condominium.

### **3.2 Articles of Incorporation of OLDE MARCO, A CONDOMINIUM**

The Offered Condominium shall be administered, operated and maintained by the Association. The legal document that establishes the Association is its Articles of Incorporation, which set forth the purposes and powers of the Association. The Articles of Incorporation of the Association ("Articles") are included as Exhibit 3 to this Offering Circular. The Articles provide that membership in the Association shall be comprised of Unit Owners in the Offered Condominium.

A member of the Association is entitled to one (1) vote for each Unit owned by a Unit Owner. The Articles also set forth the qualifications for members of the Association's Board ("Directors"), and, provide for the election of the Directors. Each Unit Owner in the Condominium shall become a member of the Association by the acquisition of ownership of fee title to any Unit, as evidenced by the recording of the instrument of conveyance amongst the Public Records of Collier County, Florida. New members are required to deliver a true copy of the recorded deed or other instrument of acquisition of title to the Association (please refer to the Articles).

### **3.3 By-Laws of OLDE MARCO, A CONDOMINIUM**

The By-Laws of the Association ("By-Laws") specifically detail the everyday working features of the Association and the Condominium and are set forth as Exhibit 4 hereto. The By-Laws describe how and when the meetings of the members and Board of Directors are held and the powers and duties of the Directors and officers of the Association. The By-Laws also set forth the items that make up the budget of the Association and provide for a procedure for preparation and approval of the budget. A discussion as to the allocation of expenses of the Association amongst Unit Owners is set forth in this Offering Circular.

The By-Laws provide that "Members" (Unit Owners other than Developer) shall be entitled to elect at least one-third (1/3) of the Directors once the sales of fifteen percent (15%) or more of the Units in the Condominium are closed; notice of such election shall be given to the Unit Owners within sixty (60) days thereof.

**THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE RESORT UNITS HAVE BEEN SOLD.**

The By-Laws provide that Members shall be entitled to elect a majority of the Board upon the happening of any one of the events set forth in the By-Laws. These provisions are designed to assure Members' representation on the Board and to provide a method for their ultimate control.

### 3.4 Miscellaneous Documents.

Certain other documents attached as Exhibits to this Offering Circular and not previously mentioned include: (a) Escrow agreement (Exhibit 9 hereto), which provides for the escrowing of all deposit monies with an escrow agent; (b) Estimated Operating Budget for OLDE MARCO, A CONDOMINIUM (Exhibit 6); (c) Floor Plans for each type of Unit (Exhibit 2); (d) Management Agreement for Olde Marco Condominium Association, Inc. (Exhibit 10); and (e) Receipt for Condominium Documents which is utilized in conjunction with delivery of this Offering Circular.

### 3.5 Utility Services.

Water supply and sewage service are provided to Olde Marco by the City of Marco Island, Florida. Developer has constructed storm drains for storm drainage and water retention area, Waste disposal for the general area is presently provided by the City of Marco Island, Solid Waste Division. Utility lines for electricity and telephones are substantially underground. Electric service is supplied by Florida Power and Light and telephone service is supplied by Sprint. Cable television service is provided by Comcast. Each Unit has its own meter for electricity and that charge is billed to each Unit Owner. The billing for electricity to the Common Elements will be an expense of the Association. The billing for electricity to the Resort Support Facility Units on each floor will be an expense of the Developer for those units. The billing for water for the Units and common elements will be an expense of the Association.

## IV. ESTIMATED CLOSING EXPENSES; EXPENSES OF OWNERSHIP; PROPOSED BUDGETS

### 4.1 Estimated Closing Expenses.

The following is a schedule of estimated closing expenses or items of expense in addition to the "Purchase Price" of a Unit, to be paid by the purchaser at the "Closing" (as those terms are defined in the Contract):

- (a) Utility deposits and initial electric bill if the electricity has been used in the Unit.
- (b) Prorated quarterly condominium association dues and a working capital contribution of twice the monthly assessment for Common Expenses then in effect for the Unit to be paid to the Association.
- (c) Insurance premiums, in the event insurance coverage in addition to that provided by the Association is obtained by the Unit Owner. Please refer to Section 3.1.1 of this Offering Circular for further details. Each Unit Owner should consult his own insurance agent to, determine the extent such personal coverage is advisable addition to the coverage provided by the Association

(d) Mortgage closing costs on a mortgage, when applicable, including Lender's attorney's fees and premium for Mortgagee Title Insurance.

(e) Attorneys' fees and broker's commissions for any attorney or broker retained by purchaser.

(f) Real property taxes prorated for the year in which the Closing is noticed to occur if a final bill has been issued as of the Closing Date, or an estimate thereof.

It is the Developer's understanding that new commercial condominium real estate has generally been assessed by the Tax Assessor at 100% of the selling price; however, Developer recommends that independent

Inquiries are made for a reliable estimate of a particular real estate tax bill. Payment for the tax bill for the current fiscal year may be made in November of the fiscal year, at which time the Unit Owner may take advantage of a maximum discount of four percent (4%). The allowable discount decreases by one percent (1%) each month until the month of March, at which time the tax payment is due without discount.

Real estate taxes in Florida become a lien on the property as of the date of assessment, which is January 1 of each year, but are not payable until November 1 of that same year. Taxes are assessed on Calendar year basis. At Closing, real estate taxes attributable to the Unit shall be prorated as of the date Developer, in accordance with the Contract, first schedules a Closing on the Unit, whether or not the Closing actually takes place upon that date. NO credit, however, will appear on the closing statement for real estate taxes next coming due, but the same shall be properly credited or paid to purchaser upon purchaser's presentation to Developer of a paid tax bill for the real estate taxes on the Resort Unit for the year in which the Closing takes place, which credit or payment by Developer shall be based Upon the November payment discount. In the event the Closing shall take place at a time when taxes have paid, an appropriate charge to purchaser for purchaser's prorated amount of taxes based on the Closing date will appear on the closing statement. If for any reason taxes are assessed against the condominium property as a whole, then in that year the amount of taxes attributable to each Unit is computed by multiplying the percentage of Common Elements attributable to each Unit by the total tax assessment against the condominium property. Should real estate taxes be assessed against the condominium property for the year in which the proration occurs, then the amount of taxes prorated between purchaser and Developer in accordance with the procedure mentioned above will be the amount of taxes attributable to the Unit computed by multiplying the applicable percentage of Common Elements times the total bill as above mentioned.

#### 4.2 Method Used for Allocating Expenses

The expenses ("Common Expenses") of operating the Condominium and the Association are allocated and assessed amongst the Unit Owners of the Condominium in accordance with their fractional share of Common Expenses, as set forth in the Declaration:

#### 4.3 Budgetary Materials.

Budgets have been prepared for the Condominium and the Association (hereinafter also referred to as "Association Budgets") and are attached as Exhibit 6 to this Offering Circular. These budgets constitute a summary of the mandatory financial obligations of Unit Owners payable to the Association as Common Expenses. Assessments are payable monthly or quarterly, in advance, on the first day of each month or quarter of each year. In preparing the Association Budgets (The Budgets), information has been based upon prior experience of other commercial condominiums. Developer believes that the Budgets are reliable; however, because actual expenditures may differ from estimated expenditures and because of possible changes in the future expenses and the scope and timing of additional facilities, it is not intended nor should it be considered as a representation, guarantee or warranty of any kind whatsoever including, without limitation, that the actual expenses for any period of operation may not vary from the amount estimated, or that the Association will not incur additional expenses or will not provide for reserves or other sums not reflected in these Proposed Budgets. Hence, the Budgets do not constitute any warranty or guarantee as to the magnitude of what the assessments are to be.

Further, the Budgets are neither intended nor should they be considered all inclusive or as a representation, guarantee or warranty of any kind whatsoever of all expenses to be incurred as a result of Unit ownership. For example, the Budgets do not include real estate taxes on the Resort Units,

Unit Owner insurance, telephone, electric, or other utility services which may be billed directly to the Unit Owner and not to the Association. The procedures for adopting the budgets are set forth in the By-Laws of the Association. . .

#### 4.4 Working Capital Contributions.

The Working Capital Contributions are paid on a one-time basis to the Association at closing in addition to the prorated portion of the monthly assessments on the Unit. However, if Developer reacquires a Unit previously conveyed, the Unit Owner to whom Developer next conveys legal title is not required to make a Working Capital Contribution.

The Association, by its Board, may use the Working Capital Contributions to pay extraordinary expenses which may be incurred by the Association, to purchase furnishings, and to purchase initial and future equipment and supplies which may be required to commence proper



operations (not items to be provided by Developer). In addition, the Working Capital Contributions may be used to make any deposits required by utility companies or to prepay insurance premiums required by the Condominium Documents for the protection of the Condominium Property, Common Properties, the Unit Owners, the Board of the Association, or in and about the operation of the Association and may also be used to make any payments due to the Association. Any unused portion of the Working Capital Contributions may be used and applied for any proper purpose and shall not be credited in reduction of the assessments. Developer has no obligation to contribute to, maintain or replenish the Working Capital Contributions or the balance in any reserve account.

#### 4.5 Liens for Nonpayment.

THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP OR REPAIR OF THE COMMONLY USED FACILITIES ON CONDOMINIUM PROPERTY UNDER THE DECLARATION. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Under the Condominium Act and the Declaration, upon the default by any Unit Owner in the payment of any assessment of Common Expenses, the Association will have a lien upon such owner's Unit and the share of the Common Elements appurtenant to such Unit in the amount of such unpaid assessment, plus interest thereon. In addition to other remedies, the Association may accelerate all remaining installments of an annual assessment. A Unit Owner so defaulting will also be liable to the Association for court costs and reasonable attorneys' fees at all trial and appellate levels incurred by the Association in the collection of such unpaid assessments and the enforcement of its lien, the payment of which will also be secured by such lien. Such a lien will be effective upon the recording of a Claim of Lien in the Public Records of Collier County, Florida, and will remain in force until all amounts secured thereby, plus interest thereon, have been fully paid. Notwithstanding the foregoing, if the Unit Owner pursuant to Section 718.116(4) of the Condominium Act records a Notice of Contest of Lien ("Notice"), the Claim of Lien shall be void if the Association does not file an action to enforce the lien within ninety (90) days of mailing of the Notice by the Clerk of the Circuit Court. Such a Claim of Lien includes such assessments of Common Expenses as are due and payable when the Claim of Lien is recorded. Any such lien shall be subordinate to Liens for real estate taxes on the Unit and to any sum unpaid to an Approved Mortgagee of record.

The lien may be foreclosed by a suit brought in the name of the Association, acting on behalf of the Unit Owners, in the same manner as the foreclosure of a mortgage on real property, or

an action may be brought by the Association to recover the unpaid assessment without foreclosing the lien. At any judicial sale held in connection with the proceedings to enforce such a lien the Association may bid on the Unit and hold, lease mortgage or convey such Unit, as the Board of Directors of the Association may determine.

#### V. MANAGEMENT OF THE CONDOMINIUM AND THE COMMON PROPERTIES

The Board of Directors of the Association may manage the Condominium or may elect to employ a professional management agency to assist them in that regard. The management company may be an affiliate of the Developer.

There is an agreement by and between Olde Marco, A Condominium and Marco Cat, LLP, to manage the Condominium under a written contract with a specified term but which may be terminated by either party thereto upon sixty (60) days' written notice (see Exhibit 10).

The management company shall provide supervisory and contracting services for the repair and maintenance, and general upkeep of the condominium property; shall prepare budgets and carry on the day-to-day financial accounting for the Association, and shall bill and collect assessments from Unit Owners payable to the Association.

The compensation of the management company shall be \$40.00 per month for each of the 51 Units or \$480.00 per year per Unit. In addition, the management company shall be entitled to a fee of \$250.00 per document for preparation and recording of liens and release of liens; the actual cost for salary taxes and benefits paid to on-site employees or for contracted service, including, but not limited to, accounting; and \$200.00 for each sales and/or rental application processed, if applicable. There is no provision in the management contract for increases during the term thereof.

**THERE IS A CONTRACT FOR MANAGEMENT OF THE, CONDOMINIUM ASSOCIATION AND COMMON ELEMENTS OF THE CONDOMINIUM WHEREIN THE ASSOCIATION AND ITS COMMON ELEMENTS ARE TO BE MANAGED BY MARCO CAT, LLP.**  
(Please see Exhibit 10 of this Offering Circular for specific details relaying thereto.)

#### VI. MISCELLANEOUS MATTERS

The Law Office of Demian M. Kruchten, LLC, located at 2662 Airport Road South, Naples, Florida 34112, is legal Counsel for the Developer in relation to the drafting of these documents.

McAnley Engineering of Naples, Florida is the engineer for OLDE MARCO, A CONDOMINIUM. Rhodes and Rhodes Surveyors, Inc., of Naples, Florida, prepared The Site Plan, Floor Plans, and other documents included in Exhibit 2 of this Offering Circular

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**OLDE MARCO, A CONDOMINIUM**

MARCO CAT, LLP, a Minnesota limited liability partnership, (hereinafter called the "Developer") does hereby declare as follows:

1. **Introduction and Submission.**

1. **The Land.** The Developer, a Minnesota limited liability partnership owns the fee title to certain land located in Collier County, Florida, as more particularly described in Exhibit "2" annexed hereto (the "Land"), less and except the interests owned separately by Marco Cat Penthouse Association, Inc. and its members.

1.2 **Submission Statement.** The Developer hereby submits the Land and all improvements erected or to be erected thereon, including water and sewer utility facilities, all rights and appurtenances belonging thereto, and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public and private (cable television and all other information, transmission, and preservation equipment), and all other utility installations therein or thereon owned by the utility or entity furnishing services to the condominium (and excluding Developer owned cable television and all other information transmission and preservation equipment) - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof applicable to "Commercial Condominiums". Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, except as described herein.

1.3 **Name.** The name by which this condominium is to be identified is OLDE MARCO, A CONDOMINIUM (hereinafter called the "Condominium"), with an address of

100 Palm St Marco Island, FL 33985

2. **Definitions.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof.

2.2 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the

Association, as amended from time to time.

- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4 "Association" or "Condominium Association" means Olde Marco Condominium Association, Inc., a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the representative body which is responsible for administration of the Association.
- 2.7 "Building" means the structures situated on the Condominium Property including the buildings in which are located the "Units."
- 2.8 "By-Laws" mean the By-Laws of the Association, as they exist from time to time.
- 2.9 "Common Elements" means and includes: The portions of the Condominium Property which are not included in the "Units," including, without limitation, the following items:
- (a) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services and/or heating, cooling, ventilation or other services to more than one (1) "Unit" or to the "Common Elements", together with related property and installations.
  - (b) An easement of support in every portion of a "Unit" which contributes to the support of the Building, other "Units" and/or any part of the "Common Elements".
  - (c) The property and installations required for the furnishing of utilities and other services to more than one (1) "Unit" or to the "Common Elements".
  - (d) Any other parts of the "Condominium Property" designated as "Common Elements" in this "Declaration" or the "Act".
- 2.10 "Common Expenses" mean all expenses incurred by the "Association" for the "Condominium" and charges assessed or imposed against "Units" in the "Condominium" by the "Association" as set forth in this "Declaration" and the "Act".
- 2.11 "Common Surplus" means the excess of all receipts of the "Association" collected on behalf of the "Association", including, but not limited to, Assessments, rents, profits and revenues on account of the "Common Elements", over the amount of "Common Expenses".

- 2.12 "Condominium Parcel" means a "Unit" together with the undivided share in the Common Elements which is appurtenant to said "Unit"; and when the context permits, the term includes all other appurtenances to the "Unit".
- 2.13 "Unit" means a "Unit" intended for occupancy, or other use, by an owner or his family, guests, invitees, lessees or employees, but may not be occupied for residential purposes.
- 2.14 "Unit Owner" or "Owner of a Unit" or "Owner" means the owner of a Condominium Parcel intended for "Unit" uses; such uses may not include residential uses.
- 2.15 "Unit(s)" means each "Unit," or collectively all "Units," as the case may be.
- 2.16 "Commercial Unit" means each Unit, which is limited to being used as a commercial condominium unit.
- 2.17 "Commercial Unit Owner" means the owner of any unit.
- 2.18 "Unit Owner(s)" means either a "Unit Owner" or Commercial Unit Owner."
- 2.19 "Condominium Property" means the land, improvements and other personal property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.20 "County" means the County of Collier, State of Florida.
- 2.21 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.22 "Developer" means Marco Cat, LLP, a Minnesota limited liability partnership, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. "Developer" may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the "Condominium". In the event of any partial assignment, the assignee shall not be deemed the "Developer", but may exercise such rights of "Developer" as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis.
- 2.23 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the "Condominium Property", including, but not limited to, the Buildings.
- 2.24 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") any other lender generally recognized as an institutional lender, or the "Developer", any of which hold a first mortgage on a "Unit" or "Units", and any and all investors, or the successors and assigns of such investors, who have loaned money to "Developer" to acquire, or construct

improvements upon the Property and who have a mortgage lien on the Property securing such a loan. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of "Units" by which greater than one-half (½) of the voting interests of "Units" subject to mortgages held by "Institutional First Mortgagees" are encumbered.

- 2.25 "Limited Common Elements" means those Common Elements the use of which is reserved to a certain "Unit" or "Units" to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.26 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.27 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.28 "Utility Service" means and is intended to include, but is not limited to, electric power, gas, telephone, hot and cold water, heating, air conditioning ventilation systems, garbage and sewage disposal, TV cable and other information, transmission and preservation equipment.
- 2.29 "Resort Support Facility Unit" means the storage closets on each floor which shall not be sold as a "Condominium Unit," but shall be retained by Marco Cat, LLP, its successors or assigns, and which shall be used in support of hotel operations located on site.

### 3. Olde Marco Condominium Association, Inc.

- 3.1 Role of Association. The Developer has formed the Association to operate the Condominium; each Unit Owner shall be a member of the Association.

### 4. Description of Condominium.

- 4.1 Identification of Units. The Land has constructed thereon two (2) buildings (named "Tarpon" and "Dolphin") and a "Water House/Pump House" (serving both the condominium and other non-condominium property) each building contains three (3) stories, floors 2, 3, and 4, of "Units" with each Unit being a resort suite, with 24 resort suites on each floor of the Tarpon Building and with 27 resort suites on each floor of the Dolphin Building, and each building with roof and a ground parking floor. (The fifth floor of each building is excluded from the condominium association, and forms a separate, unrelated condominium association.) Each Unit is identified by a separate numerical or alpha-numerical designation. The designation of each Unit is set forth on Exhibit "2" attached hereto. Exhibit "2" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the

Building in which the Units are located, and a plot plan thereof. Said Exhibit "2", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the non-exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

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

- (a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:
  - (i) The horizontal plane of the undecorated finished ceiling. In a Unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the Unit, the ceiling shall include the vertical or diagonal surface connecting the raised ceiling with the ceiling of the remaining portion of the Unit, and the upper boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the ceiling.
  - (ii) Lower Boundary: The horizontal plane of the undecorated finished floor. In a Unit containing a room in which the floor is raised above the level of the floor in the rest of the Unit, the floor shall include the vertical or diagonal surface connecting the raised floor with the floor of the remaining portion of the Unit, and the lower boundary shall include the plane of the undecorated finished vertical or diagonal surface that joins the planes of the undecorated finished horizontal portions of the floor.
  - (iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the floor of the middle or upper floor(s), ceiling of the middle or lower floor(s), stairwell adjoining floors or nonstructural interior walls shall be considered a boundary of the Unit.
- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited

to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass, or other transparent material, and all framing and casings therefor, shall be included in the boundaries of the Unit.

- (d) Boundaries - Further Defined. The boundaries of the Unit shall not include all of those spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and those surfaces above the undecorated and/or inner surfaces of the ceilings of each Unit and, further, shall not include those spaces and improvements lying beneath the undecorated and unfinished inner surfaces of all interior bearing walls and/or bearing partitions and, further, shall exclude all pipes, ducts, wires, conduit and other facilities running through any interior wall or partition for utility services to other Units and/or for Common Elements. No part of the interior non-boundary walls within a Unit shall be considered a boundary of the Unit.
- (e) Exceptions and Conflicts. In the case of any conflict between the boundaries of the Unit as above described and the dimensions of the Unit shown on Exhibit "2", the above provisions describing the boundary of a Unit shall control, it being the intention of this Declaration that the actual as-built boundaries of the Unit as above described shall control over erroneous dimensions contained in Exhibit "2" attached hereto, and in the event it shall appear that any dimension shown on Exhibit "2" attached hereto is erroneous the Developer or the President of the Association shall have the right to unilaterally amend the Declaration to correct such survey, and any such amendment shall not require the joinder of any Unit Owner or Institutional First Mortgagee so long as the purpose of the amendment is merely to correct an error and correctly describe the boundaries of a Unit. In the case of Unit boundaries not adequately described as provided above, the survey of the Units contained in Exhibit "2" shall control in determining the boundaries of a Unit. In the case of any conflict between the language of this Declaration describing the boundaries of any Unit, and in the language contained on Exhibit "2" describing the boundaries of a Unit, the language of this Declaration shall control.

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

- (a) Patios, Balconies and Terraces. Any patio, balcony or terrace (and all improvements thereto and walls facing same) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s).
- (b) Miscellaneous Areas, Equipment. Any area upon which is located equipment or fixtures (including air conditioning compressors) which are for the exclusive use of any particular Unit or Units and the equipment or fixtures themselves shall be



Limited Common Elements of such Unit(s).

- (c) Parking. There is shown on Exhibit "2" parking on the common areas which have been set aside for the use of the Condominium. All Parking Spaces shall be common elements and not limited common elements. There shall be no assigned parking spaces and all parking, other than those spaces granted easements to other parties as set forth in section 4.4 below, is on a first come, first serve basis. The use of a Parking Space shall not be appurtenant to any Unit. Some parking spaces shall be designated for Handicapped Parking, as required by law, and some Parking Spaces shall be designated to accommodate public transportation. No Handicap Parking Spaces shall be assigned as limited common elements.

- (d) Restrictions on Parking Spaces.

The use of all Parking Spaces, may be regulated by rules and regulations promulgated by the Board of Directors of the Association, but any assignment of such Parking Spaces must be agreed to and approved by Developer, and Developer has a veto over any such assignment.

- (e) Mortgage Provision. Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages his Unit, together with his Limited Common Elements (whether or not ordinarily fully assignable apart from the Unit), such Limited Common Elements shall not be assignable apart from the Units unless they are released from the lien of such mortgage.

4.4 Easements. The following easements are hereby created (in addition to any easements created under the Act):

- (a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, other services and drainage and water management in order to serve the Condominium, and in favor of Marco Cat, LLP, the Olde Marco Island Inn & Suites, The Shops At Olde Marco, the Marco Café, their successors and assigns for all necessary uses of the "Water House", otherwise know as a "Pump House," located on the South East end of the Condominium Property, and which serves the needs of such entities and their properties. A Unit Owner shall do nothing within or outside their Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, other service, or water management facilities or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit during reasonable hours to maintain, repair or replace the pipes, wires, ducts, vents,

cables, conduits and other utility, cable television, communications and security systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except as necessary to prevent damage to the Common Elements or to another Unit or Units, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit.

- (c) **Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvement (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the improvements shall stand.
- (d) **Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, elevators, stairwells and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements and across driveways and entrances leading from the public streets to association property owned by Marco Cat, LLP, its successor or assigns, as from time to time may be paved and intended for such purposes; such non-exclusive easement to run with the land so encumbered. (No vehicle over three tons is permitted on such property granted as non-exclusive easement by Marco Cat, LLP for association or individual unit owners purposes.) None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements. Marco Cat, LLP, its successors or assigns may mortgage the property it has herein granted an easement upon.
- (e) **Construction; Maintenance.** The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so or where the Developer, in its sole discretion,

determines that it is required to do so. Notwithstanding the foregoing, this right shall at all times be subject to the provisions of Section 718.111(5) Florida Statutes.

- (f) Sales Activity. For as long as there are any unsold Units or Units leased to the Developer, and thereafter so long as the property is operated as a Resort, the Developer, its designees, nominees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model apartments and sales and construction offices, to show model Units and use Units as guest suites and to show and use the Common Elements to prospective purchasers and tenants of Units, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or for rent.
- (g) Cable TV and Other Equipment For Transmission and Preservation of Information. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any closed circuit, master antenna, community antenna or cable television system or the like (including any and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominees) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as the "CATV System"), (ii) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the CATV System or any part thereof, (iii) the right to connect the CATV System to whatever receiving source the owner of the CATV System deems appropriate, and (iv) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the CATV System (and related, ancillary services to Units, including, but not limited to, security-related services) at charges not to exceed those normally paid for like services by occupants of a Resort or condominium units within the general vicinity of the Condominium, and to retain or assign all such charges.
- (h) Special Telephone Services and Other Equipment For The Transmission and Preservation of Information. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any telephone system (including any and all related conduits, wires and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominee) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as "the Telephone System"), (ii) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the Telephone System or any part thereof, and (iii) the right to provide (or cause to be provided) mandatory or non-mandatory services to Units through the Telephone System (and related, ancillary services), and to retain or assign the charges collected from Owners therefor.

- (i) Use of Pool and Laundry Facilities. The Developer, as owner of the Pool and Laundry Facilities, grants a non-exclusive easement, running with the land, to the Association and its members for the reasonable use by Unit Owners, their immediate family and two guests of the Pool, and for use of the Laundry facilities, as long as such use is in conformity with rules governing such facilities, such rules not to unreasonably limit such use. Such use is at the user's sole risk and will be limited to post-dawn, pre-dusk unless otherwise allowed under the rules governing such use. The laundry facilities referenced herein are currently located on the second floor of the Olde Marco Shops, directly adjacent to the Condominium Property. Both such Pool and Laundry non-exclusive easements are subject to change depending on any adjustments, movement, improvements or repairs which Developer now or hereafter decides to make to both such facilities, and such actions may be taken at Developer's sole and absolute discretion.
- (j) Ingress and Egress and Parking. A non-exclusive easement in favor of each Marco Cat Penthouse unit owner, Marco Cat, LLP and the Olde Marco Island Inn and Suites, and any of such above mentioned's successor and or assigns, their guests and invitees, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, elevators, stairwells and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements and across driveways and entrances and for use in parking as from time to time may be paved and intended for such purposes; such non-exclusive easement to run with the land so encumbered. None of the non-exclusive easements specified in this subparagraph (j) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Marco Cat Penthouse unit owners, Marco Cat, LLP and the Olde Marco Island Inn and Suites, and any of such above mentioned's successor and or assigns with respect to such easements. Olde Marco Condominium Association, Inc., its successors or assigns, may mortgage the property it has herein granted an easement upon.
- (k) Specifically Assigned Easement Parking. In addition to the non-exclusive easement granted in subparagraph (j) above, an exclusive easement in favor of each Marco Cat Penthouse unit owner, their successors and/or assigns, and their guests and invitees, shall exist for two specifically assigned, permanent parking spaces per each Penthouse, as shown in Exhibit 2; such exclusive easement to run with the land so encumbered. These spaces may be marked as "Reserved" or other similar language, in a manner in keeping with the quality and style of the property, in order to ward off potential "squatters". Such exclusive easement parking spaces so herein granted may be encumbered by the Association, subject to such easement. More specifically, Penthouse 1 shall have an exclusive easement of spaces 17 and 19, Penthouse 2 shall have an exclusive easement of spaces 26 and 28, Penthouse 3 shall have an exclusive easement of spaces 23 and

25, Penthouse 4 shall have an exclusive easement of spaces 14 and 16, Penthouse 5 shall have an exclusive easement of spaces 146 and 148, Penthouse 6 shall have an exclusive easement of spaces 151 and 153, Penthouse 7 shall have an exclusive easement of spaces 154 and 156.

- (1) Additional Easements. The Developer (as long as it owns any Units) and the Association, on their behalf and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as its attorney-in-fact for this purpose), each shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities or water management facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners, their family, guests, invitees, lessees or employees, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

5. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom, except as parking assignments which may change without notice, and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, including the limited common element rights of the parking spaces, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

6. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

- 6.1 Fractional Ownership and Shares. The ownership of each Unit shall include an undivided fractional interest in the Land and other Common Elements as defined in §718.108 of the Florida Statutes and an undivided fractional interest in the Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, which, for each unit shall be 1/51st.
- 6.2 Voting. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance

with the provisions of the respective By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

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

7.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or Owners by not less than one-third (1/3) of the Units in the Condominium. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by affirmative vote of:

- (a) Unit Owners in excess of 50% of the Units in the Condominium and by not less than 66 2/3% of the Board of Directors of the Association; or
- (b) Unit Owners in excess of 66 2/3% of the Units in the Condominium.

However, under no circumstances may amendments be made to any condominium documents regarding change in the occupancy and use restrictions, unless and until the property's zoning is changed to allow for residential use of the property.

7.2 By the Developer. The Developer, during the time it has the right to elect a majority of the Board of Directors of the Association, may amend the Declaration, the Articles of Incorporation or the By-Laws of the Association to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would materially and adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing by majority vote.

7.3 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of Collier County.

7.4 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, and all record owners of liens on the Unit join in the execution of the amendment and unless all the record owners of all other Units approve the amendment. No amendment may be

adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of units without the consent of said Developer and mortgagees in each instance; any mortgagee consent shall not be unreasonably withheld. No amendment shall make any change in the sections hereof entitled "Reconstruction or Repair after Casualty", or "Condemnation", which amendment materially affects the rights or interests of the primary Institutional First Mortgagee, unless the Primary Institutional First Mortgagee shall join in the amendment. Such joinder shall not be unreasonably withheld. The provisions of this Section 7.4 may not be amended in any manner.

No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision ... for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

8. Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, maintenance, repair and replacement of screens, windows, the interior side of the entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

8.1 Common Elements. Except to the extent (i) expressly provided to the contrary herein, (i.e., as to Limited Common Elements) or (ii) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of specific Unit Owners, in which case such cost and expense shall be paid solely by such Unit Owner(s).

8.2 Specific Unit Owner Responsibility. The obligation to maintain and repair any equipment, fixtures or other items of property which service a particular Unit or Units and are Limited Common Elements thereof shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units, are Limited Common Elements or are

Common Elements other than Limited Common Elements. Where a Limited Common Element consists of a terrace (more particularly without limitation, balcony, lanai, court or patio) the Unit Owner who has the right to the exclusive use of said terrace, balcony, lanai, court or patio shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling within said area, if any, and the fixed and/or sliding glass door(s), and the sliding glass door or window screens, or other portions of the entrance way(s) of said area, if any, and the sliding glass door or window screens, and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs, if any. Notwithstanding the foregoing, the Association may provide maintenance for the Limited Common Elements and shall charge and collect such costs and charges incurred for said maintenance to the specific Unit entitled to use the Limited Common Elements for which the maintenance and repairs were performed.

9. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$50,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$50,000 or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

10. Additions, Alterations or Improvements by Unit Owner.

10.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Unit or any Limited Common Element, including, but not limited to, the installation of awnings, hurricane shutters, hot tubs or trellises in balconies, terraces and patio areas, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. Notwithstanding the foregoing, the Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to specifications as to color, style and other factors deemed relevant by the Board. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the Board of Directors, such



approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, and all other Unit Owners harmless from and to indemnify them for any expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

The Board may appoint an Architectural Review Committee to assume the foregoing functions on behalf of the Board.

- 10.2 Additions, Alterations or Improvements by Developer. The foregoing restrictions of this Section 10 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements), and (b) expand, alter, add to or eliminate all or any part of the recreational facilities.

11. Changes in Developer-Owned Units. Without limiting the generality of the provisions of paragraph 10.2 above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; and (ii) change the layout or number of rooms in any Developer-owned Units. Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to such Units, and incorporate portions of the Common Elements, provided that such relocation and alteration does not materially adversely affect the market value (in the Developer's opinion) or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this paragraph 11 may be effected by the Developer alone. Without limiting the generality of Section 11 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

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

12.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles of Incorporation and the By-Laws of the Association (respectively, Exhibits "3" and "4" annexed hereto), as amended from time to time. In addition, the Association shall have the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours when necessary for the maintenance, repair or replacement of any Common Elements therein, or of any portion of a unit maintained by the

Association pursuant to this Declaration, or at any time as necessary, for making emergency repair therein to prevent damage to the Common Elements or a Unit or Units.

- (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, lease, maintain, repair and replace the Common Elements.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at all reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer or the developer itself) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, and repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property.
- (g) The power to charge a fee for the exclusive use of Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner being granted, by the Association, a right to such exclusive use.
- (h) All of the powers which a corporation not-for-profit in the State of Florida may exercise.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration, and exhibits attached hereto, this Declaration shall take

precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 12.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 10.1 hereof. Further, the Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where such insurance is not required to be obtained or maintained by the Association when the Association is in compliance with Section 718.111(11) Florida Statutes, This Declaration and the Articles and By-Laws of the Association.
- 12.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.
- 12.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 12.5 Acts of the Association. Unless the approval or action of Owners of Units and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.
13. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of

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

14. Collection of Assessments.

- 14.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while that person is the Unit Owner. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for the share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.
- 14.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of Collier County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in

recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days prior written notice to the applicable Unit Owner, the Association may declare the next twelve (12) months of Assessment installments to be accelerated (or if acceleration to such extent is prohibited by the Act, then the Association may declare Assessments to the maximum extent permitted under the Act to be accelerated) and such shall thereupon be immediately due and payable. In the event that the amount of such installments changes during the period of which Assessments were accelerated, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 14.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 14.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 14.5 First Mortgagee. In the event a First Mortgagee or its successors or assignees shall obtain title to the Unit as a result of foreclosure of its mortgage pursuant to proceedings in which the Association has been properly named as a junior lienholder, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such Institutional First Mortgagee, its successors and assigns, shall be liable only for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due subsequent to that period of time commencing six (6) months preceding acquisition of title as a result of the foreclosure (provided the Association has been properly named as a defendant junior lienholder) or the acceptance of such deed.

In no event shall such first mortgagee be liable for more than one (1) percent of the

original mortgage debt. Such unpaid share of Common Expenses or Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

- 14.6 Developer's Liability for Assessments. During the period from the date of recording of this Declaration until the earlier of (i) the date twelve (12) months after the first closing of the sale of a Unit, which period may be extended by the Developer an additional twelve (12) months without the consent or approval of the Board of Directors or of the Unit Owners, or (ii) the date on which control of the Association is transferred to Unit Owners other than the Developer (the "Guarantee Expiration Date"), the Developer shall not be obligated to pay the share of the Common Expenses and Assessments attributable to Units it is offering for sale, provided that the regular monthly Assessments for Common Expenses imposed on each Unit Owner other than the Developer shall not increase during such period over the amount set forth in the Estimated Operating budget contained in the applicable Prospectus delivered to such Unit Owner when such Owner contracted to purchase the Unit, if applicable, and provided further that the Developer shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by the Assessments at the guaranteed level. For purposes of this Section, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. After the Guarantee Expiration Date, the Developer shall have the option of extending the guarantee by written agreement with a majority of non-Developer Unit Owners on the same terms or paying the share of Common Expenses and Assessments attributable to Units it is then offering for sale. No funds received or currently receivable from Unit purchasers or Owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing. Notwithstanding anything to the contrary contained herein, capital contributions or start-up funds collected from Unit purchasers at closing may be used to reimburse Developer for start-up expenses of the Association, or otherwise as the Association shall determine from time to time and need not be restricted or accumulated.
- 14.7 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all assessments and other moneys owed to the Association by the Unit Owner with respect to their Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 14.8 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Association from time to time.
- 14.9 Use of Common Elements. The Association shall not charge any fee against a Unit Owner for the use of the Common Elements or Association Property unless such use is

the subject of a lease between the Association and the Unit Owner.

15. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

15.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida. Marco Cat Penthouse Condominium Association, Inc., has a right to be included in such policy as long as it pays for its *pro rata* share of such policy premiums, deductibles and other costs.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds, as shall the Penthouse Unit owners if the Marco Cat Penthouse Condominium Association, Inc. joins in on such policy.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Units, including, but not limited to, their personal property, or for their personal liability and living expense or for any other risks not otherwise insured in accordance herewith.

15.2 Coverage. The Association shall use its best efforts to maintain insurance covering the following:

- (a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners) and all Improvements located on the Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or owned by the Association, and any such, just named, property owned by Marco Cat Penthouse Association, Inc. if such Association joins in such policy (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
- (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and
  - (ii) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$500,000 per person and \$200,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity Insurance, covering all directors, officers, employees and management agents of the Association who control or disburse Association funds, if any, such insurance to be in an amount not less than as required by Section 718.112(2)(j), Florida Statutes.
- (f) Association Property. Appropriate additional policy provisions, policies or



endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

- (g) Such other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

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

- 15.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least forty-five (45) days prior written notice of all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 15.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums shall be financed in such manner as the Board of Directors deems appropriate.
- 15.5 Unit Owner Coverage. Each Unit Owner shall obtain and maintain at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Unit and for their personal liability arising in the use of their own Unit and other areas of the Common Elements for which they have exclusive use, or for which they have an obligation to repair or replace.
- 15.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may, but need not, be designated by the Board of Directors. References herein to the Insurance Trustee shall be deemed to apply to the Board of Directors if it elects to serve such functions pursuant to Section 15.11 hereof. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such

proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

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

15.7 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 15.6 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

15.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

- 15.9 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 15.10 Benefit of Mortgagees. Certain provisions in this Section 15 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 15.11 Insurance Trustee Optional. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails to or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 15.12 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.
16. Reconstruction or Repair After Fire or Other Casualty.
- 16.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the Insured Property as a result of fire or other casualty (unless 75% or more of the Insured Property is destroyed or substantially damaged and Unit Owners owning 80% or more of the applicable interests in the Common Elements elect not to proceed with repairs or restoration and a Majority of Institutional First Mortgagees approve such election), the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.
- If 75% or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning 80% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the Boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the Sole discretion of the Association (with respect to proceeds held for damage to that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment

shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

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

16.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then-applicable building and other codes; or if this is not possible, then said reconstruction or repair must be made substantially in accordance with the plans and specifications approved by the Board of Directors of the Association, and in accordance with currently applicable building and other codes. If the damaged property which is to be altered is the Building, then approval shall be obtained from not less than 80% of the applicable interests in the Common Elements, as well as from the Owners of all Units (and their respective mortgagees) who own a Unit for which the plans are to be altered.

16.3 Special Responsibility. If the damage is only to those parts of the Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

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

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the

Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction funds, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

- (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to Property (if not insured or if under-insured), or may be distributed to Owners of Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Property. All proceeds must be used to affect repairs to the Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Property and promptly affect the repairs. Any balance remaining after such repairs have been affected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund which has been established for reconstruction and repair not paid for by insurance, after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an owner which is not in excess of the contribution to the fund paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the

Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its resident and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

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

- 16.5 Benefit of Mortgagees. Certain provisions in this Section 16 are for the benefit of mortgagees of Units and may be enforced by any of them.

17. Condemnation.

- 17.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for the taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee (if appointed); and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

- 17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

- 17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the

manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 17 specifically provided.

17.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion and discretion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and payable by the Owner of the Unit.
- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall be restated as follows:
  - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
  - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

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

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

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due

and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

- (b) Addition to Common Elements The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be affected by restating the shares of continuing Unit Owners as follows:
  - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 17.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 17.4(c) hereof, by the Percentage Balance. The result of such division for each Unit shall be the adjusted percentage for such Unit.
- (d) Assessments. If the balance of the award (after payments to the Unit Owners and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of The Division of Florida Land Sales, Condominium and Mobile Homes of the Department of Business Regulation and Florida Statute Section 718.1255. Except as set forth in Florida Statutes Section 718.1255(4)(c),



(d) and (e), the cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

17.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

17.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements, and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

18. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

18.1 Occupancy. Each "Unit" shall be used as a commercial resort suite for rental as a daily rental unit, except as otherwise herein expressly provided. A "Unit" owned by an individual, corporation, partnership, trust or other fiduciary may be occupied by such Owner's family, guests, invitees, lessees, or employees. Under no circumstances may the "Unit" be occupied by a greater number of persons than it was designed to accommodate (except for temporary occupancy by visitors), unless authorized in writing by the Board of Directors prior to the date when the extra occupants shall arrive. The provisions of this Section 18.1 shall not be applicable to the "Resort Support Facilities Unit" or units to be used by the Developer for model apartments, sales offices or management services.

18.2 Children. Children shall be permitted to reside in "Units", subject to the provisions of subdivision 18.1, above.

18.3 Pets. Absolutely no pets of any kind are allowed at any time on Association property, nor in any individual Unit.

18.4 Alterations. Without limiting the generality of Section 10.2 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements, including, but not limited to, painting or other

decorating of any nature, installing any electrical wiring, television antenna, machinery, pools, whirlpools or saunas or air-conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 10.1 hereof).

- 18.5 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 18.6 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its occupants or with the normal operations of the Olde Marco Island Inn & Suites, its successors or assigns.
- 18.7 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 18.7.
- 18.8 Leases. Olde Marco will be operated as a resort, therefore, each of the fifty-one "Units" will be rented on a day-to-day basis except when the Owner, or its designees, are in occupancy, which occupancy is limited to uses provided for in, and as defined in, subsection 18.1, *supra*. The "Resort Support Facilities Unit", which may in part be leased to tenants for the operation and uses compatible in support of a family resort. Notwithstanding that Olde Marco will be operated as a resort, each Unit owner may, in their sole and absolute discretion, as limited by Association documents, decide with whom and on what terms, they would enter, or not enter, into any rental agreement with any licensed reputable rental agent of its choice, as long as such terms are for commercial use, reasonable and compatible with the zoning limitations on the property, and that such leases or rents be at reasonable market rates prevailing on Marco Island at the time. However, such leasing agent shall not have right to "set up shop" on the property, and must have an offsite leasing facility. Repeated abuse or corruption by such leasing agents, as determined in the sole discretion of the Board, may lead to temporary or permanent disqualification to act as a leasing agent of Association Unit(s).

In making its determination as to whether to approve a lessee of a Unit, the Association shall not discriminate on the grounds of race, age, gender, religion, national origin or physical or mental handicap.

- 18.9 Exterior Improvements; Landscaping. Without limiting the generality of Sections 10.1 and 18.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters (except hurricane shutters), screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association and the Architectural Review Committee, such findings to be review-able and subject to being overturned by the Board.

None of the balconies that are contiguous to Units and designated as Limited Common Elements under the Declaration may be enclosed, glassed in or screened in, nor may any Unit Owner alter the configurations of such balconies, or hang plants, draperies, screens or other items therefrom.

- 18.10 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, wood, etc., will be permitted throughout the Unit, provided, however, use of a hard and/or heavy surface floor covering in any location within the Unit must be submitted to and approved by the Board of Directors of the Association and also meet applicable structural requirements. Also, the installation of any Improvement or heavy object must be submitted to and approved by the Board of Directors of the Association, and be compatible with the structural design of the building and be adequately insulated from sound transmission. The Board of Directors of the Association may require the review of a structural engineer at Unit Owner's expense. All other areas of the Unit which do not receive the approved hard and/or heavy surface floor coverings, are to receive sound absorbent, less dense floor coverings, such as carpet. Floor coverings on balconies shall be limited to a maximum composite thickness of  $\frac{1}{2}$ " and a maximum composite weight of four pounds per square foot, including setting bed and/or adhesive materials, unless approved otherwise by the Board of Directors of the Association and compatible with the structural and architectural designs. The Board of Directors of the Association will have the right to specify the exact material used on balconies. These use guidelines are consistent with good design practices for waterproofing and structural design. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations.

- 18.11 Effect on Developer; Association. The restrictions and limitations set forth in this Section 18, except Sections 18.3 and 18.8, shall not apply to the Developer or to Units owned by or leased to the Developer. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 18 for good cause shown.

**APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS.**

19. Selling and Mortgaging of Units. No Unit Owner other than the Developer may sell his Unit and no Unit Owner including the Developer may lease his Unit except by complying with the following provisions:

- 19.1 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 19.2 Financing of Purchase of Units by the Association. If the Unit is being sold to the Association, then the purchase of any Unit by the Association shall be made on behalf of all Unit Owners if approved by a majority of Unit owners present at a meeting with applicable quorum requirements having been met. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.
- 19.3 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise said Unit by will, or to have said Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and said Unit subject to, the provisions of this Section 19.
- 19.4 Mortgage of Units. No Unit Owner shall have the right to mortgage his Unit without the approval of the Association, except to an Institutional First Mortgagee; or the seller of a Unit who takes back a purchase money mortgage to secure a portion of the purchase price ("Approved Mortgagees"). The approval of any other mortgagee may be upon conditions determined by the Board and approval may be withheld in the sole discretion of the Board.
20. Compliance and Default. Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 20.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.
- 20.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the

Condominium Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages, to make a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, to hire an attorney to make a charge against the Unit Owner and Unit for the costs of such reasonable attorneys' fees incurred in requiring performance and/or compliance of the Unit Owner and to collect such charge in the same manner as the collection of Assessments and to have a lien therefor as elsewhere provided. In addition, the Association shall have the right, for itself and its employees and agents, to enter the Unit and perform the work necessary to prevent damage to the common elements or to a unit or units.

- 20.3 Fines. In the event a Unit Owner or occupant fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event shall not exceed any maximum amount permitted by the Condominium Act, as such Act may be amended from time to time. Any fine shall be imposed by written notice to the Unit Owner or tenant, signed by an officer of the Association, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the Unit Owner or tenant has the right to contest the fine by delivering written notice to the Association within ten (10) days after receipt of the notice imposing the fine. If the Unit Owner or tenant timely and properly objects to the fine, the Board of Directors of the Association shall appoint a Committee of Unit Owners who shall conduct a hearing within thirty (30) days after receipt of the Unit Owner's or tenant's objection, and shall give the Unit Owner or tenant not less than ten (10) days written notice of the hearing date. At the hearing, the Committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The Unit Owner or tenant shall have the right to attend the hearing and to produce evidence on his behalf, and if the Unit Owner or tenant fails to attend then the hearing will be deemed waived and the Board of Directors may ratify the fine without further proceedings. At the hearing the Committee shall ratify, reduce or eliminate the fine and shall give the Unit Owner or tenant written notice of its decision. Any fine shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Committee decision at the hearing. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

- 20.4 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees

(including appellate attorneys' fees).

- 20.5 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
21. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 90% of the applicable interests in the Common Elements and by a majority of Institutional First Mortgagees. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.
- This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.
22. Additional Rights of Mortgagees and Others.
- 22.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the Condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of any alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.
- 22.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

23. **Covenant Running With the Land.** All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, shall be perpetual and shall be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.
24. **Additional Provisions.**
- 24.1 **Notices.** All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) or registered mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.
- 24.2 **Interpretation.** The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 24.3 **Mortgagees.** Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 24.4 **Exhibits.** There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall

control over those hereof.

- 24.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 24.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 24.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 24.8 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 24.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 24.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of Olde Marco as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of Attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 24.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include



all or no genders.

24.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

24.13 Access of Developer to Building and Units. For as long as Developer remains liable to any Unit Owner, or the Condominium Association, under any warranty, whether statutory, express or implied, for act of omission of Developer in the development, construction, sale and marketing of the Condominium, or any Units therein, then Developer and its agents shall have the right, in Developer's sole discretion, and from time to time, to enter the Condominium or any Units for the purpose of inspecting, testing and surveying same, to determine the need for repairs, improvements or replacements, so as to permit Developer to fulfill its obligations under such warranties. Failure of the Condominium Association or of a Unit Owner to grant such access shall result in the appropriate warranty being nullified and of no further force or effect.

IN WITNESS WHEREOF, the Developer, MARCO CAT, LLP, a Minnesota limited liability partnership, has caused this Declaration to be duly executed and corporate seals to be hereunto affixed this 13 day of May, 2003.

Signed, sealed and delivered  
in the presence of:

M. A. Eichen  
Witness #1 - Signature  
Sacquette A. Eichen  
Witness #1 - Printed Name

Lisa Collins  
Witness #2 - Signature  
Lisa Collins  
Witness #2 - Printed Name

MARCO CAT, LLP,  
a Minnesota limited liability partnership

By: TCP, LLP.  
a Minnesota limited liability partnership  
its Managing Member

K. Patrick Kruchten  
By: K. Patrick Kruchten, President

**THIS INSTRUMENT PREPARED BY:**

Demian M. Kruchten, Esq.  
The Law Office of Demian M. Kruchten, LLC  
2662 Airport Road, South  
Naples, Florida 34112

STATE OF  
COUNTY OF

The foregoing Declaration of Condominium was acknowledged before me this 13<sup>th</sup> day of May, 2003, by K. Patrick Kruchten, as Managing Member of TCP, limited liability partnership, as Managing Member of Marco Cat, LLP, who is personally known to me.

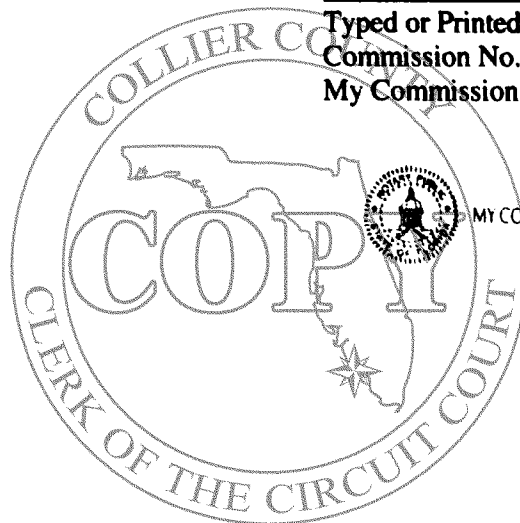
*J.A.E. Eichen*

Signature of Notary

Typed or Printed Name of Notary

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



Jacqueline A. Eichen

MY COMMISSION # CC987752 EXPIRES

January 7, 2005

**EXHIBIT "A"**

Building #140 and Building #160 and the land directly below such buildings (ground floor of parking) located at:

Being a parcel of land that is lying in Section 5, Township 52 South, Range 26 East, Collier County, Florida, and which is a portion of Blocks 3 and 15 of the plat Amended Plat of Collier City, as recorded in Plat Book 1, Page 58, of the Public Records of said Collier County and which is more particularly described as follows:

Commencing at the intersection of the East Right-of-Way line of Edington Place (a 60 foot roadway) and the North Right-of-Way line of Palm Street (a 60 foot roadway), said point being the Point of Beginning; Thence contiguous with the said East Right-of Way line the following two courses; (1) N 19°25'55" W, a distance of 119.95 feet; (2) Thence N 4°37'45" W, a distance of 256.13 feet to the intersection of the South line of Ville De Marco, a Condominium, as recorded in O.R. Book 276, Page 243 of said Public Records; Thence N 84°57'58" E, along said South line a distance of 552.66 feet to the intersection of the West line of Marco Inn Villas, a Condominium, as recorded in O.R. Book 440, Page 25, of said Public Records; Thence S 3°23'19" E along said West line, a distance of 243.28 feet to the intersection with the Right-of-Way line of Palm Street; Thence along the said North Right-of-Way line the following two courses: (1) S 84°59'22" W, a distance of 14.22 feet; (2) Thence S 70°34'45" W, a distance of 519.76 feet to the Point of Beginning.

All as more particularly describing buildings #140 and #160 in Exhibit "B" of the Declaration of Condominium of the Olde Marco, a Condominium, according to The Declaration of Condominium recorded in O.R. Book \_\_\_\_\_, Page \_\_\_\_\_, and all exhibits and amendments thereof, Public Records of Collier County, Florida.

**LESS AND EXCEPT:**

The fifth floor of Building #140 and the fifth floor of Building #160, located at:

Being a parcel of land that is lying in Section 5, Township 52 South, Range 26 East, Collier County, Florida, and which is a portion of Blocks 3 and 15 of the plat Amended Plat of Collier City, as recorded in Plat Book 1, Page 58, of the Public Records of said Collier County and which is more particularly described as follows:

Commencing at the intersection of the East Right-of-Way line of Edington Place (a 60 foot roadway) and the North Right-of-Way line of Palm Street (a 60 foot roadway), said point being the Point of Beginning; Thence contiguous with the said East Right-of Way line the following two courses; (1) N 19°25'55" W, a distance of 119.95 feet; (2) Thence N 4°37'45" W, a distance of 256.13 feet to the intersection of the South line of Ville De

Marco, a Condominium, as recorded in O.R. Book 276, Page 243 of said Public Records; Thence N 84°57'58" E, along said South line a distance of 552.66 feet to the intersection of the West line of Marco Inn Villas, a Condominium, as recorded in O.R. Book 440, Page 25, of said Public Records; Thence S 3°23'19" E along said West line, a distance of 243.28 feet to the intersection with the Right-of-Way line of Palm Street; Thence along the said North Right-of-Way line the following two courses: (1) S 84°59'22" W, a distance of 14.22 feet; (2) Thence S 70°34'45" W, a distance of 519.76 feet to the Point of Beginning.

All as more particularly described in Exhibit "B" of the Declaration of Condominium of the Marco Cat Penthouses, a Condominium, according to The Declaration of Condominium recorded in O.R. Book \_\_\_\_\_, Page \_\_\_\_\_, and all exhibits and amendments thereof, Public Records of Collier County, Florida.



# ***RHODES & RHODES LAND SURVEYING, INC.***

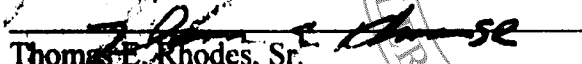
**JOHN SCOTT RHODES, P.S.M.**      **THOMAS E. RHODES, P.S.M.**  
**1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110**  
**PHONE (239) 593-0570      FAX (239) 593-0581**

Olde Marco, A Condominium

## **CERTIFICATE OF SURVEYOR**

The undersigned, being a surveyor authorized to practice in the State of Florida, pursuant to Section 718.104(4) (e), Florida Statutes, hereby certifies that the construction of the improvements comprising all units on the Second Floor, Third Floor and Forth Floor within Building #140 of Olde Marco, a Condominium, is substantially complete, so that Exhibit "B" to the Declaration of Condominium, together with Provisions of the Declaration of Condominium describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements and of each unit within said building can be determined from these materials. The undersigned further certifies that all planned improvements, including but not limited to, landscaping, utility services and access to the units within said condominium, and common element facilities serving said building have been substantially completed.

**RHODES & RHODES LAND SURVEYING, INC.**  
**FLORIDA BUSINESS AUTHORIZATION NO. LB 6897**

  
Thomas E. Rhodes, Sr.  
Professional Surveyor and Mapper  
State of Florida, License Number 5854

**NOT VALID WITHOUT THE SIGNATURE AND  
THE ORIGINAL RAISED SEAL OF A FLORIDA  
LICENSED SURVERYOR AND MAPPER**

R&R FILE NO. 2003-94CON

DATE: 5/13/23

OR: 3291 PG: 0112

LEGAL DESCRIPTION

BEING A PARCEL OF LAND THAT IS LAYING IN SECTION 3, TOWNSHIP 32 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND WHICH IS A PORTION OF BLOCKS 3 AND 15 OF THE PLAT "AMENDED PLAT OF COLLIER CITY", AS RECORDED IN PLAT BOOK 1 PAGE 58 OF THE PUBLIC RECORDS OF SAID COLLIER COUNTY AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF EDINGTON PLACE (A 60 FEET ROADWAY) AND THE NORTH RIGHT-OF-WAY LINE OF PALM STREET (A 60 FEET ROADWAY), SAID POINT BEING THE POINT OF BEGINNING, THENCE CONTIGUOUS WITH THE SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) NORTH 19 DEGREES 25 MINUTES 45 SECONDS WEST, A DISTANCE OF 119.95 FEET; (2) THENCE NORTH 4 DEGREES 37 MINUTES 45 SECONDS WEST, A DISTANCE OF 286.13 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF "VILLE DE MARCO, A CONDOMINIUM", AS RECORDED OR BOOK 278 PAGE 243 OF SAID PUBLIC RECORDS, THENCE NORTH 84 DEGREES 57 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE, A DISTANCE OF 532.66 FEET TO THE INTERSECTION WITH THE WEST LINE OF "MARCO INN VILLAS, A CONDOMINIUM", AS RECORDED IN OR BOOK 440 PAGE 25 OF SAID PUBLIC RECORDS, THENCE SOUTH 3 DEGREES 23 MINUTES 19 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 243.28 FEET TO THE INTERSECTION OF THE WITH THE NORTH RIGHT-OF-WAY LINE OF PALM STREET, THENCE ALONG THE SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) SOUTH 84 DEGREES 59 MINUTES 22 SECONDS WEST, A DISTANCE OF 14.22 FEET; (2) THENCE SOUTH 70 DEGREES 34 MINUTES 45 SECONDS WEST, A DISTANCE OF 519.76 FEET TO THE POINT OF BEGINNING.

SAID DESCRIBED TRACT CONTAINING 183,776 64 SQUARE FEET (4.21 ACRES), MORE OR LESS

NOTES

1. BEARINGS ARE BASED ON NORTHERLY RIGHT-OF-WAY LINE OF PALM STREET, AS BEING S. 70°34'45" W.
2. ELEVATIONS ARE BASED ON N.G.V.D. 1929 UNLESS NOTED.
3. FIELD MEASUREMENTS ARE IN SUBSTANTIAL AGREEMENT WITH PLAT AND/OR DEED CALLS UNLESS NOTED.
4. SUBJECT TO EASEMENTS OF RECORD
5. ABSTRACT NOT REVIEWED.
6. SURVEYORS CERTIFICATION DOES NOT APPLY TO MATTERS OF TITLE, ZONING, OR PRECEDENCE OF ENCUMBRANCES, AND IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
7. NO UNDERGROUND UTILITIES, FOUNDATIONS OR OTHER UNDERGROUND INSTALLATIONS WERE LOCATED UNLESS SHOWN.
8. NO OTHER PERSONS OR ENTITIES, OTHER THAN SHOWN, MAY RELY ON THIS SURVEY.
9. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED.
10. LEGAL DESCRIPTION HAS BEEN FURNISHED BY CLIENT.
11. FOR DETAILED ALTA SURVEY OF SUBJECT PROPERTY, SEE BOUNDARY SURVEY BY AMERICAN ENGINEERING CONSULTANTS, INC. DATED 08/31/01, HAVING REFERENCE NUMBER 36050101.

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

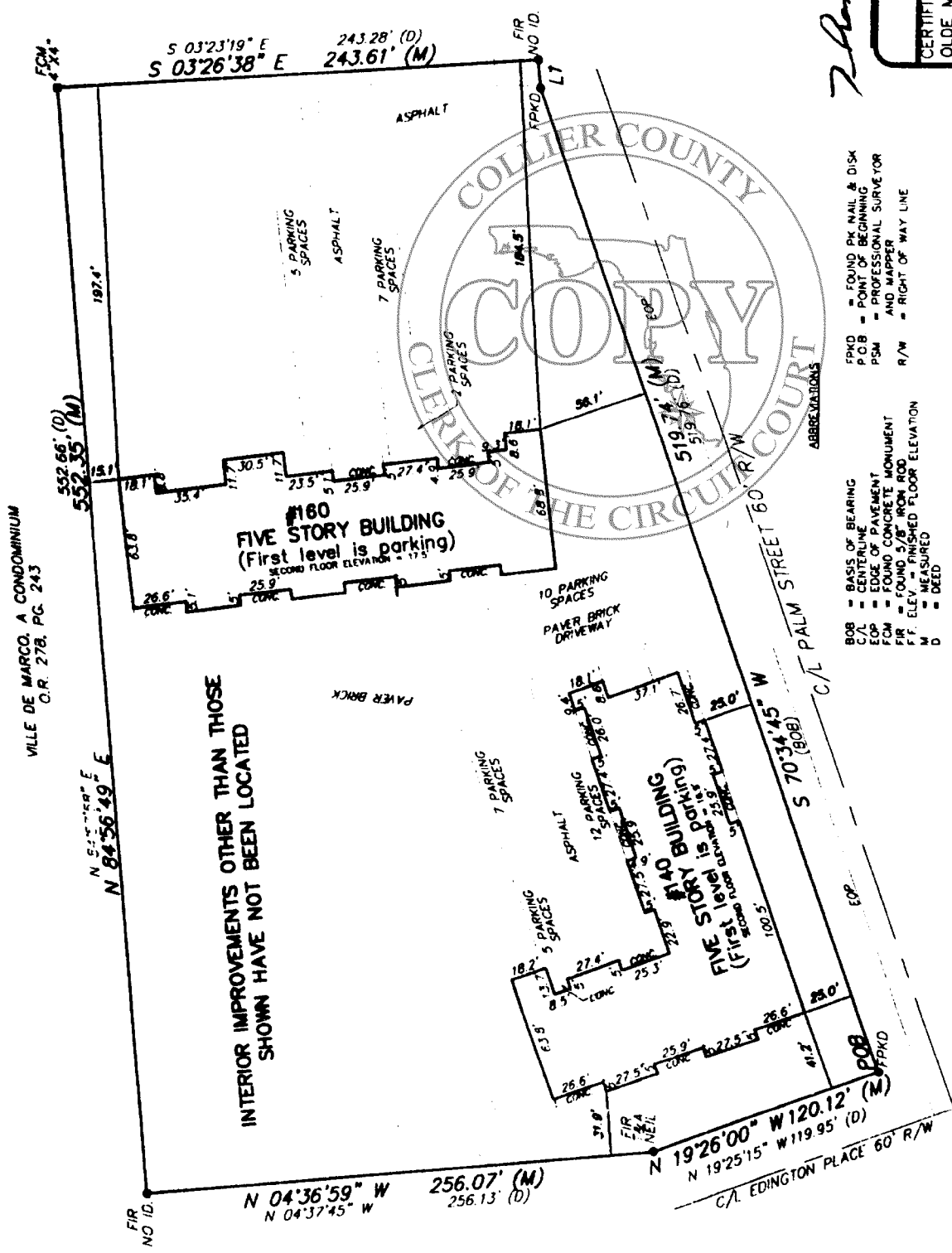
BOUNDARY SURVEY

CERTIFIED TO:  
OLDE MARCO CONDOMINIUM ASSOCIATION, INC.  
THE LAW OFFICE OF DEMIAN M. KRUCHTEN, LLC  
ATTORNEYS' TITLE INSURANCE FUND  
FIRST INTEGRITY BANK, N.A.

RHODES & RHODES  
LAND SURVEYING, INC.  
LICENSE #LB 6897

1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 (239) 593-0581 FAX

design:	THOMAS E. RHODES, SR., P.S.M. #5854
drawn:	RWC
checked:	JRT
acad #:	2003-94
view:	2003-94
plot:	2003-94
project #:	2003-94
sheet #:	1 of 1
file #:	2003-94
CON	



- ABBREVIATIONS
- BOB - BASIS OF BEARING
  - C/L - CENTERLINE
  - ED - EDGE OF DRIVEWAY
  - FCM - FOUND CONCRETE MONUMENT
  - FIR - FOUND IRON ROD
  - FLE - FOUND ELEVATION
  - M - MEASURED
  - D - DEED
  - FPKD - FOUND P.N. NAIL & DISK
  - P.C.B. - POINT OF BEGINNING
  - PSM - PROFESSIONAL SURVEYOR
  - R/W - RIGHT OF WAY LINE

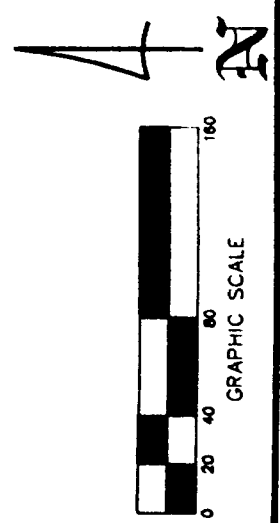
LINE TABLE		
LINE	LENGTH	BEARING
110	14.22	S 84°56'49\"
110	14.14	S 85°11'30\"

CERTIFICATION:

I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT CHAPTER 472.027, FLORIDA STATUTES.

FLOOD ZONE: PANEL NO.:  
ZONE VE: 120067 801E & 803F  
ELEVATION 11'

MAP REVISION DATE  
AUGUST 3, 1992  
JULY 20, 1998



# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

SHEET 1 OF 10

OR: 3291 PG: 0114

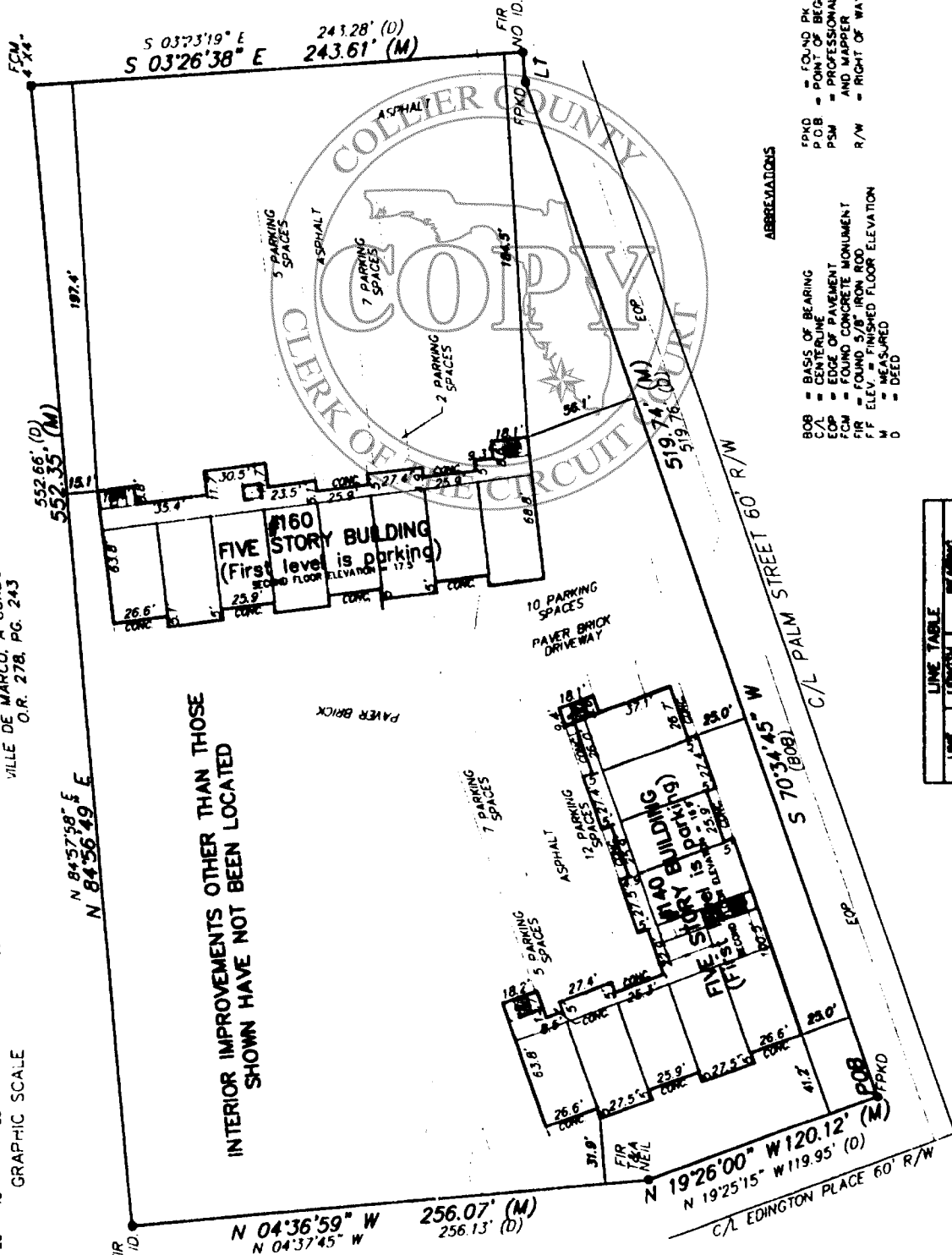


VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

N 84°57'58" E  
N 84°56'49" E

INTERIOR IMPROVEMENTS OTHER THAN THOSE  
SHOWN HAVE NOT BEEN LOCATED

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25



## LEGAL DESCRIPTION

BEING A PARCEL OF LAND THAT IS LYING IN SECTION 3, TOWNSHIP 30 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND WHICH IS A PORTION OF BLOCKS 3 AND 15 OF THE PLAT "AMENDED PLAT OF COLLIER CITY," AS RECORDED IN PLAT BOOK 1 PAGE 58 OF THE PUBLIC RECORDS OF SAID COLLIER COUNTY AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF EDWINGTON PLACE (A 60 FEET ROADWAY) AND THE NORTH RIGHT-OF-WAY LINE OF PALM STREET (A 60 FEET ROADWAY); SAID POINT BEING THE POINT OF BEGINNING, THENCE CONTIGUOUS WITH THE SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) NORTH 19 DEGREES 25 MINUTES 45 SECONDS WEST, A DISTANCE OF 119.95 FEET; (2) THENCE NORTH 4 DEGREES 37 MINUTES 45 SECONDS WEST, A DISTANCE OF 236.13 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF "ALLE DE MARCO, A CONDOMINIUM," AS RECORDED ON BOOK 278 PAGE 243 OF SAID PUBLIC RECORDS, THENCE NORTH 84 DEGREES 57 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE, A DISTANCE OF 552.66 FEET TO THE INTERSECTION WITH THE WEST LINE OF "MARCO ISLAND VILLAS, A CONDOMINIUM," AS RECORDED IN O.R. BOOK 440 PAGE 25 OF SAID PUBLIC RECORDS, THENCE SOUTH 3 DEGREES 23 MINUTES 19 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 243.28 FEET TO THE INTERSECTION OF THE WITH THE NORTH RIGHT-OF-WAY LINE OF PALM STREET, THENCE ALONG THE SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) SOUTH 84 DEGREES 58 MINUTES 22 SECONDS WEST, A DISTANCE OF 14.22 FEET; (2) THENCE SOUTH 70 DEGREES 34 MINUTES 45 SECONDS WEST, A DISTANCE OF 519.76 FEET TO THE POINT OF BEGINNING; SAID DESCRIBED TRACT CONTAINING 168,378 64 SQUARE FEET (3.87 ACRES), MORE OR LESS

SUBJECT TO ANY EASEMENT AND/OR RESTRICTIONS OF RECORD

## NOTES

1. BEARINGS ARE BASED ON NORTHERLY RIGHT-OF-WAY LINE OF PALM STREET, AS BEING S 70°34'45" W
2. ELEVATIONS ARE BASED ON N.G.V.D. 1929 UNLESS NOTED
3. FIELD MEASUREMENTS ARE IN SUBSTANTIAL AGREEMENT WITH PLAT AND/OR DEED CALLS UNLESS NOTED.
4. SUBJECT TO EASEMENTS OF RECORD
5. ABSTRACT NOT REVIEWED
6. SURVEYORS CERTIFICATION DOES NOT APPLY TO MATTERS OF TITLE, ZONING, OR FREEDOM OF ENCUMBRANCES, AND IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
7. NO UNDERGROUND UTILITIES, FOUNDATIONS OR OTHER UNDERGROUND INSTALLATIONS WERE LOCATED UNLESS SHOWN.
8. NO OTHER PERSONS OR ENTITIES, OTHER THAN SHOWN, MAY RELY ON THIS SURVEY
9. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED
10. LEGAL DESCRIPTION HAS BEEN FURNISHED BY CLIENT
11. FOR DETAILED ALTA SURVEY OF SUBJECT PROPERTY, SEE BOUNDARY SURVEY BY AMERICAN ENGINEERING CONSULTANTS, INC. DATED 08/31/01, HAVING REFERENCE NUMBER J6050101.

## ABBREVIATIONS

- BOB = BASIS OF BEARING
- C/L = CENTERLINE
- EOP = EDGE OF PAVEMENT
- FCM = FOUND CONCRETE MONUMENT
- FIR = FOUND 5/8" IRON ROD
- FF ELEV = FINISHED FLOOR ELEVATION
- M = MEASURED
- D = DEED
- FPKD = FOUND PK NAIL & DISK
- P.O.B. = POINT OF BEGINNING
- PSM = PROFESSIONAL SURVEYOR AND MAPPER
- R/W = RIGHT OF WAY LINE

## CERTIFICATION:

I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 81G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT CHAPTER 472.027, FLORIDA STATUTES

ELOOD ZONE: PANEL NO. 120067 801E & 803F  
ZONE VE ELEVATION 11'

LINE TABLE	
LINE	BEARING
1100	N 84°57'58" E
1101	N 84°56'49" E
1102	N 84°56'49" E

EXHIBIT "B"

OLDE MARCO, A CONDOMINIUM  
BOUNDARY SURVEY & SITE PLAN  
BUILDING #160

\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
RHODES & RHODES  
LAND SURVEYING, INC.

1440 RAIL HEAD BOULEVARD, #1

NAPLES, FLORIDA 34110

(239) 593-0570 FAX NO. (239) 593-0581

FLORIDA BUSINESS LICENSE NO. LB 6897

THOMAS E. RHODES, SR., P.S.M. #5854

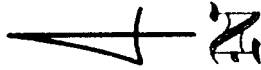
# OLDE MARCO, A CONDOMINIUM,

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 2 OF 10



GRAPHIC SCALE



VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

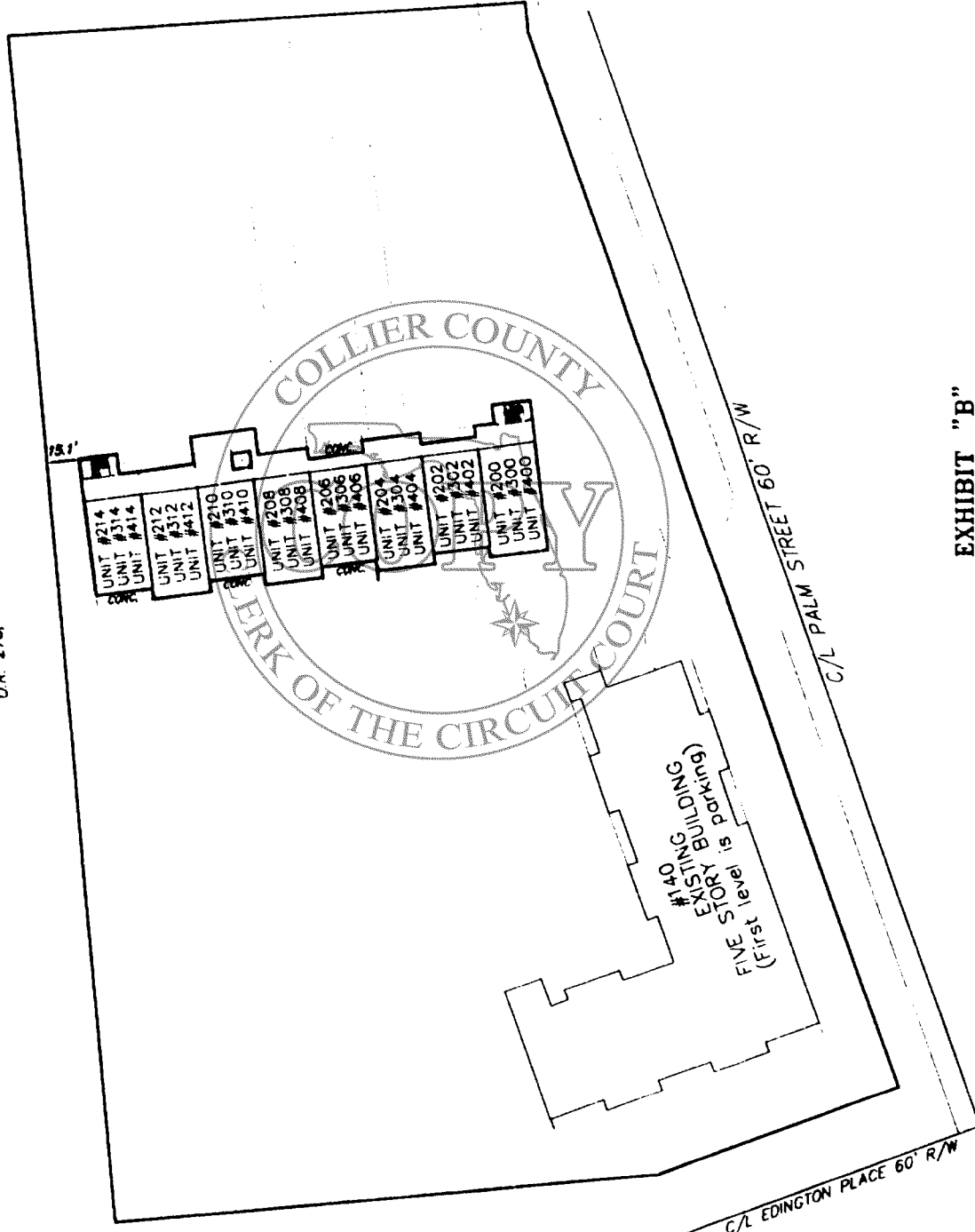


EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM,  
PLOT PLAN  
BUILDING #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OR: 3291 PG: 0115



This floor plan illustrates a five-unit apartment building, with units #200, #202, #204, #206, and #208. Each unit is a two-bedroom, two-bath configuration. The layout for each unit includes a living/dining area, a kitchen, two bedrooms, two bathrooms, and a balcony. The units are arranged in a row, with a central hallway and stairs. A large circular watermark for the 'CLERK OF SUPERIOR COURT' is centered over the plan.

**UNIT #200**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #202**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #204**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #206**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #208**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #210**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #212**

BALCONY

BEDROOM #2

BATH #2

BATH #1

BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

**UNIT #214**

BALCONY

BEDROOM #2

BATH #2

BATH #1

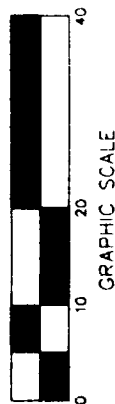
BEDROOM #1

LIVING/DINING AREA

KITCHEN

ENTRY

BALCONY (C.E.)



**EXHIBIT "B"**  
**OLDE MARCO, A CONDOMINIUM**  
**SECOND FLOOR PLANS**  
**BUILDING #160**  
**\*ASBUILT\***

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
*RHODES & RHODES*  
*LAND SURVEYING, INC.*  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 4 OF 10

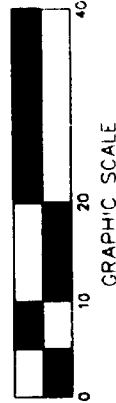
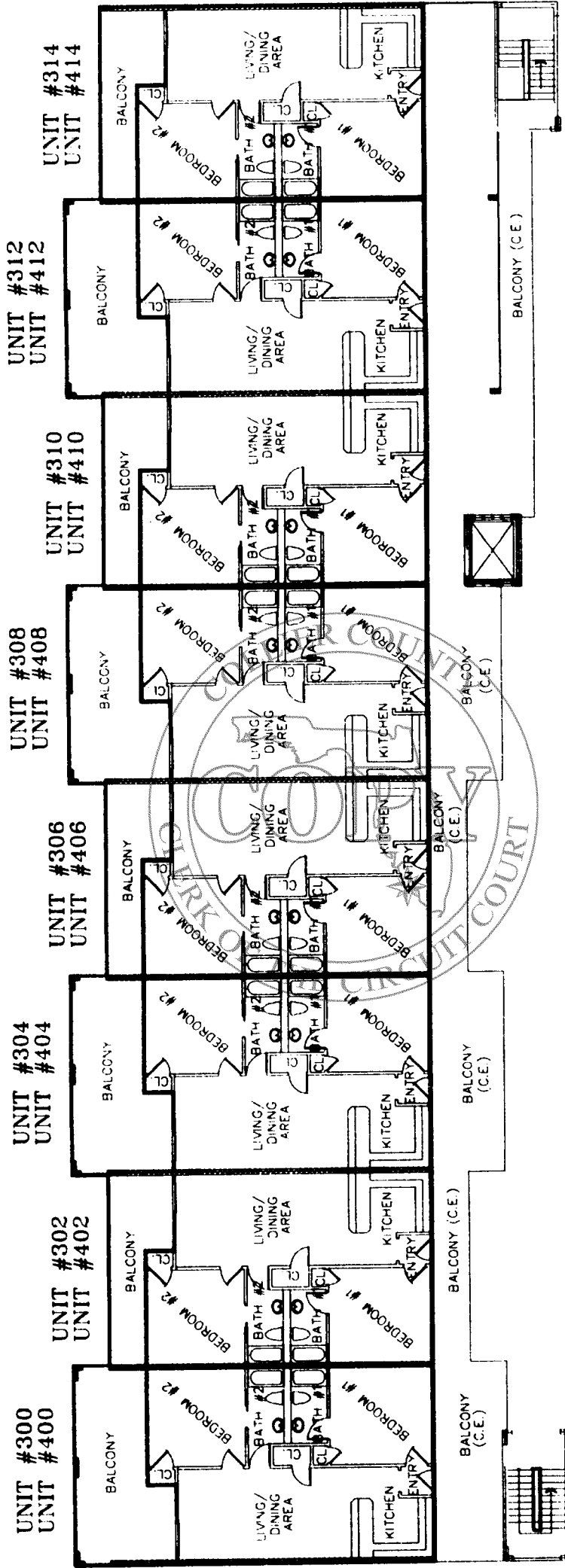


EXHIBIT "B"

OLDE MARCO, A CONDOMINIUM  
THIRD & FORTH FLOOR PLANS  
BUILDING #160  
\*ASBUILT\*

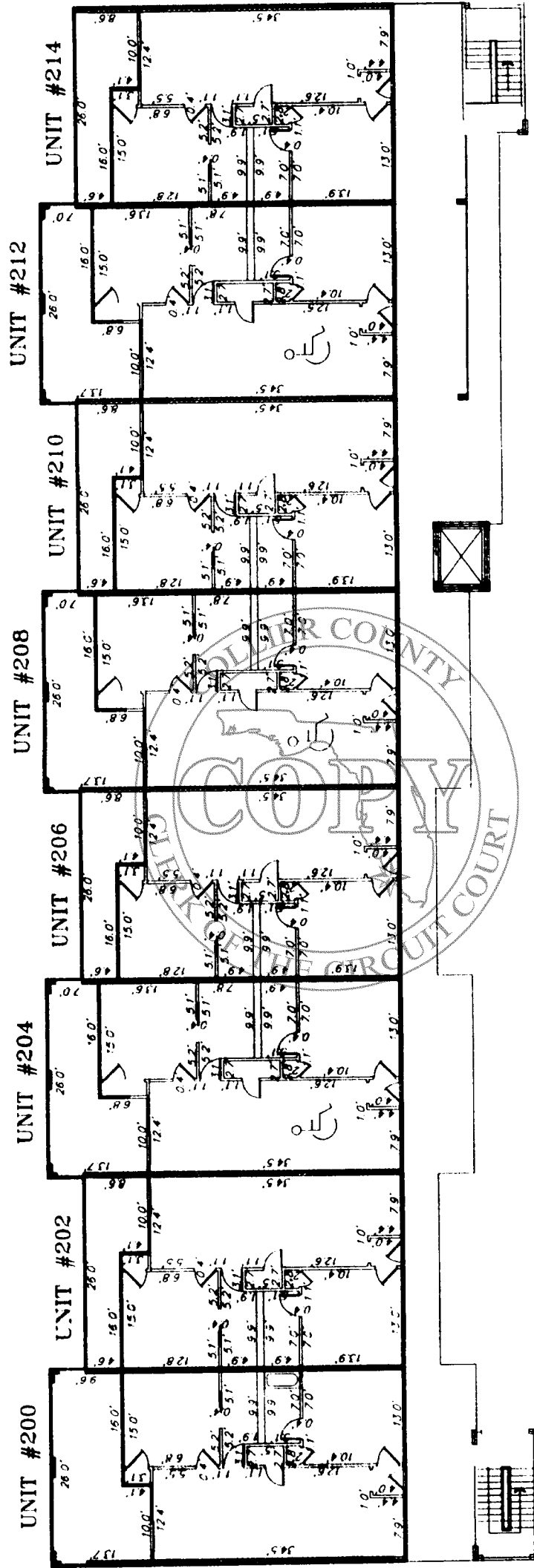
THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OR: 3291 PG: 0117

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 5 OF 10



NOTES  
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED

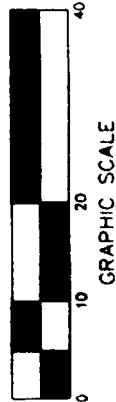
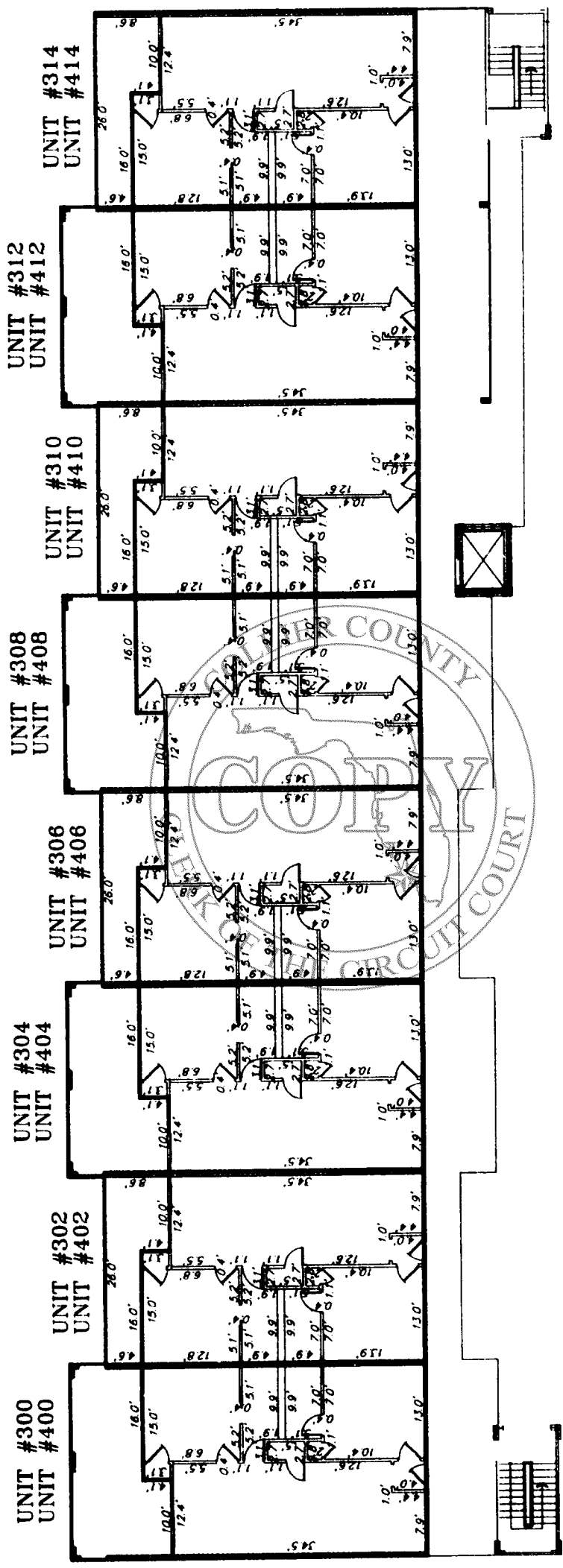


EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND FLOOR UNIT DIMENSION PLAN  
BUILDING #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

# OLDE MARCO, A CONDOMINIUM



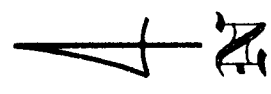
NOTES  
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED



EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
THIRD & FORTH FLOOR UNIT DIMENSION PLAN  
BUILDING #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

# OLDE MARCO, A CONDOMINIUM



VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

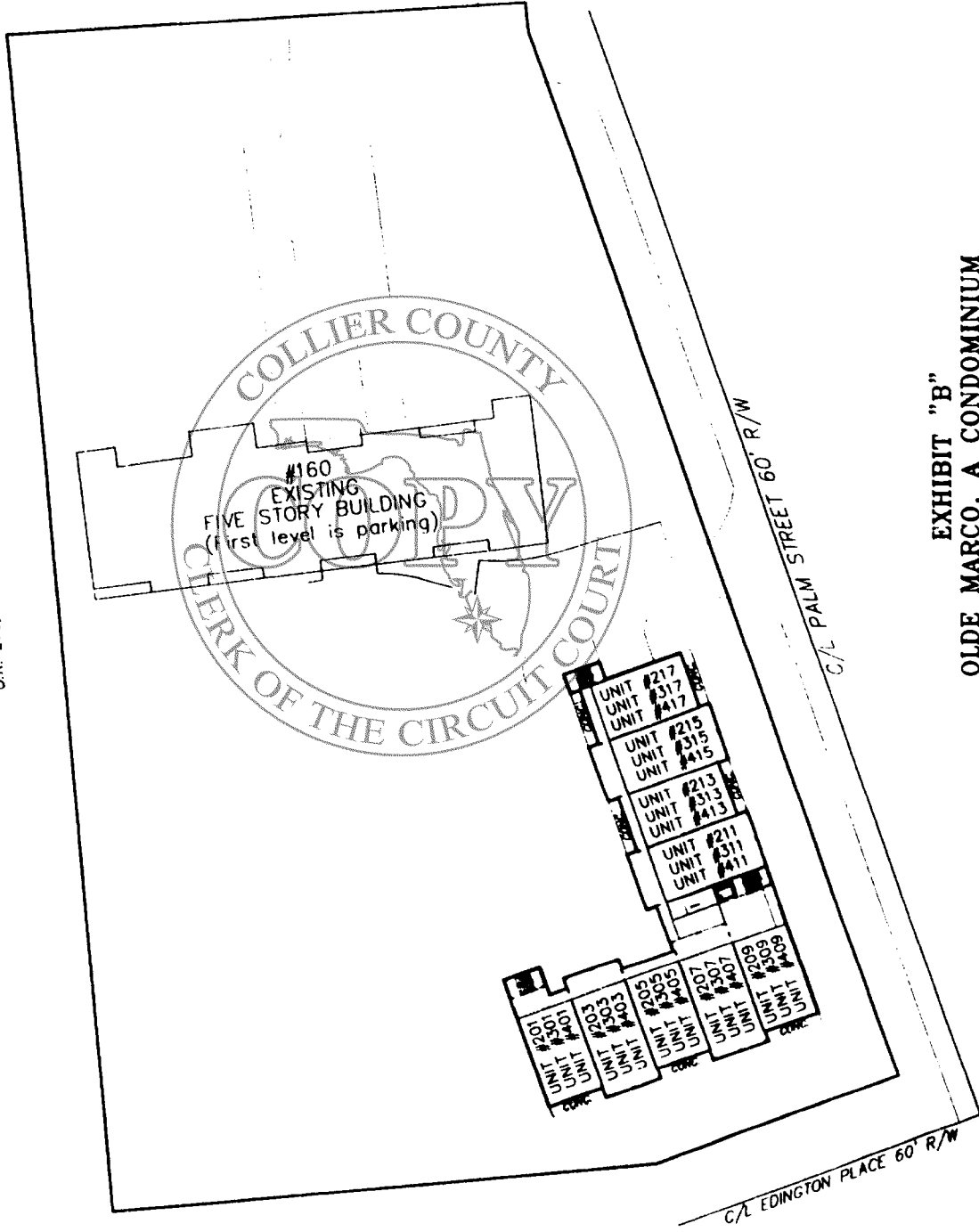
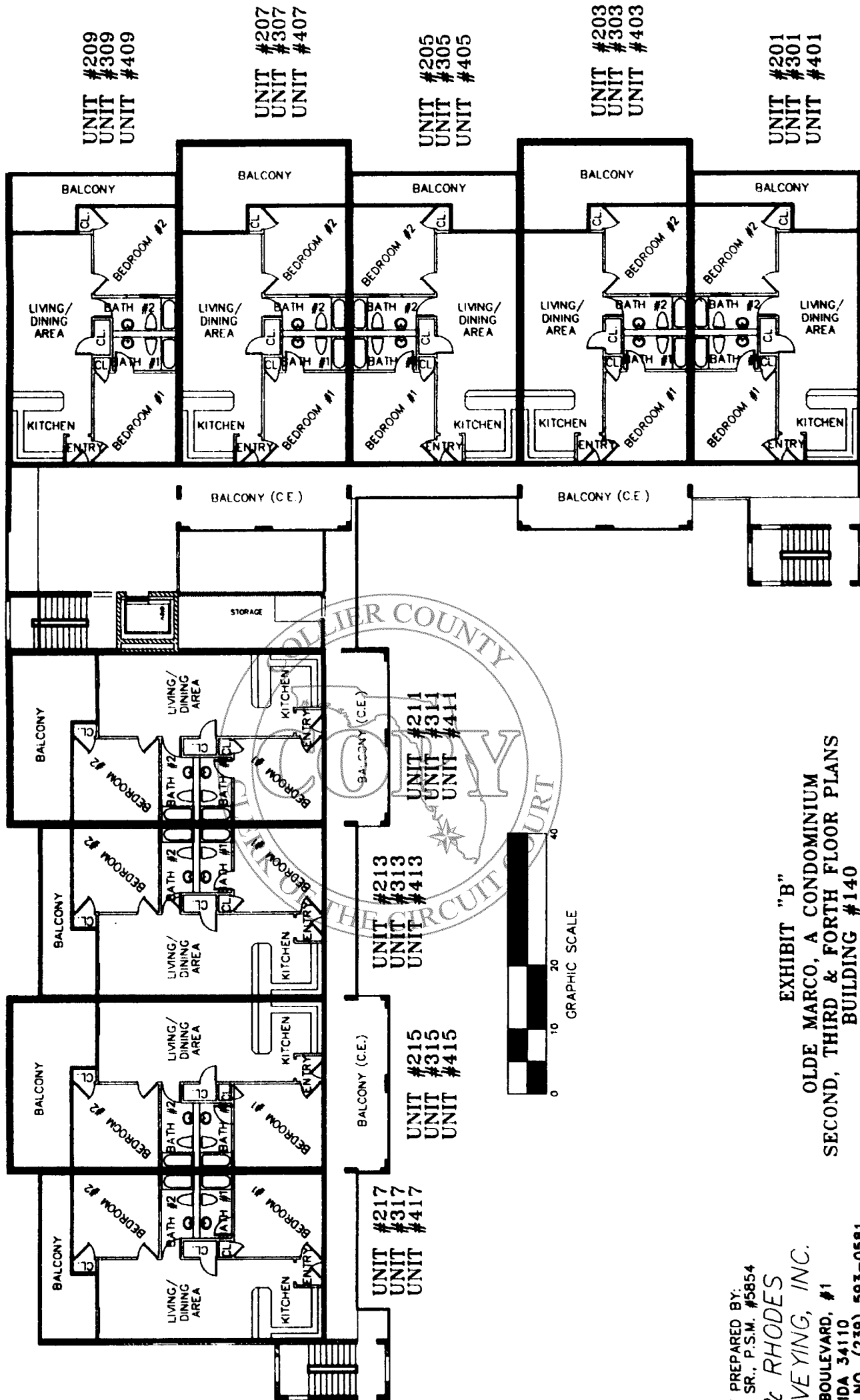


EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
PLOT PLAN  
BUILDING #140  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OLDE MARCO, A CONDOMINIUM



THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

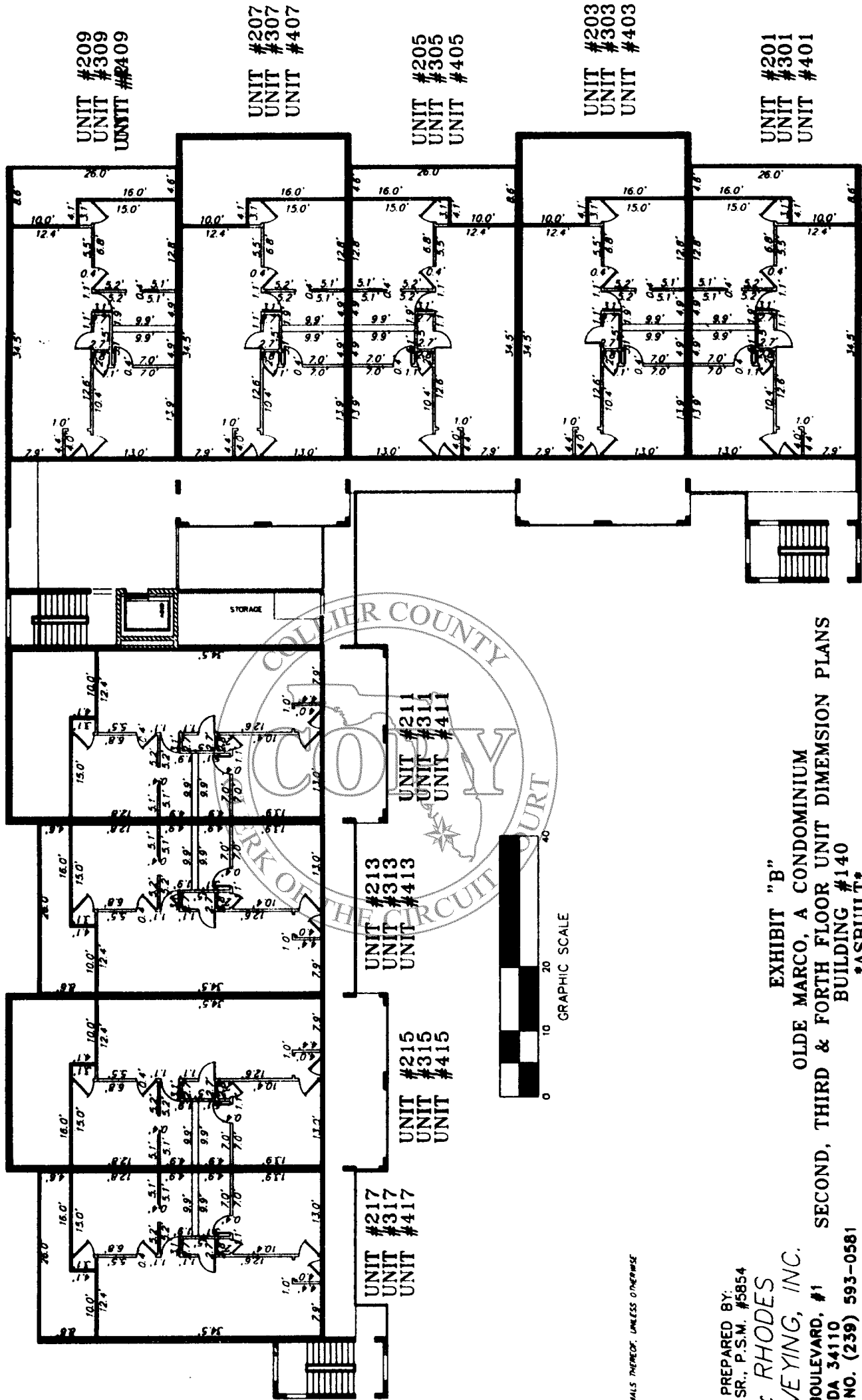
EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND, THIRD & FORTH FLOOR PLANS  
BUILDING #140  
\*ASBUILT\*

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK -----, PAGE-----

SHEET 9 OF 10

OR: 3291 PG: 0122



NOTES  
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
RHODES & RHODES  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND, THIRD & FORTH FLOOR UNIT DIMENSION PLANS  
BUILDING #140  
\*ASBUILT\*

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 10 OF 10

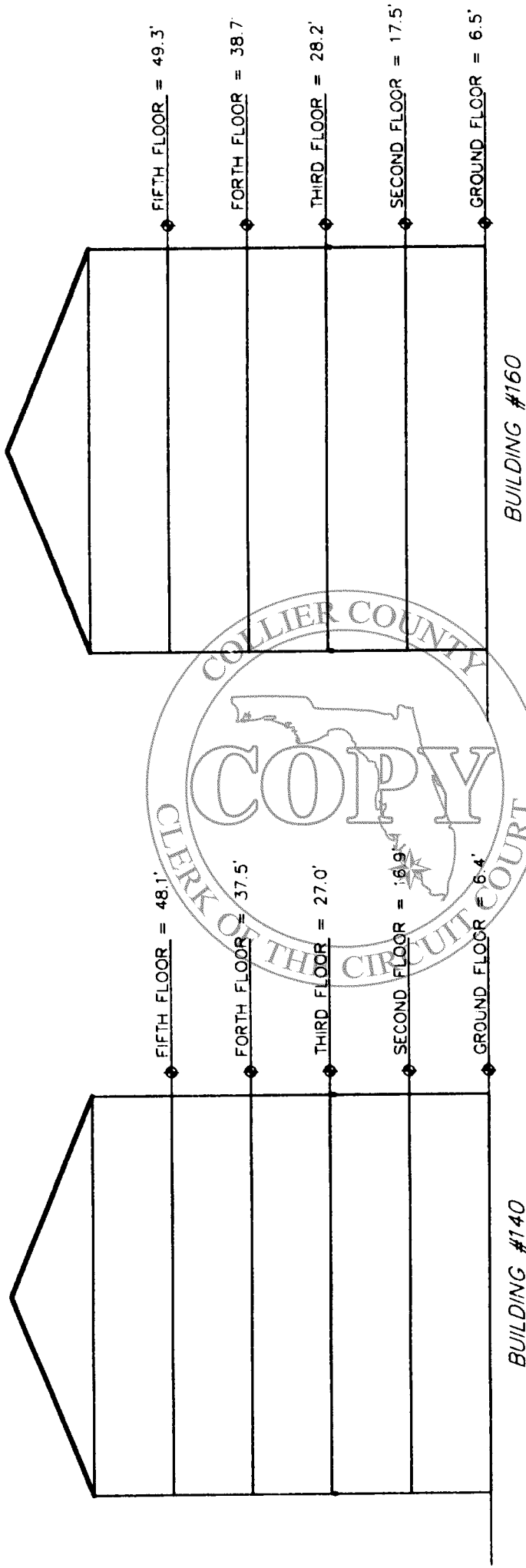


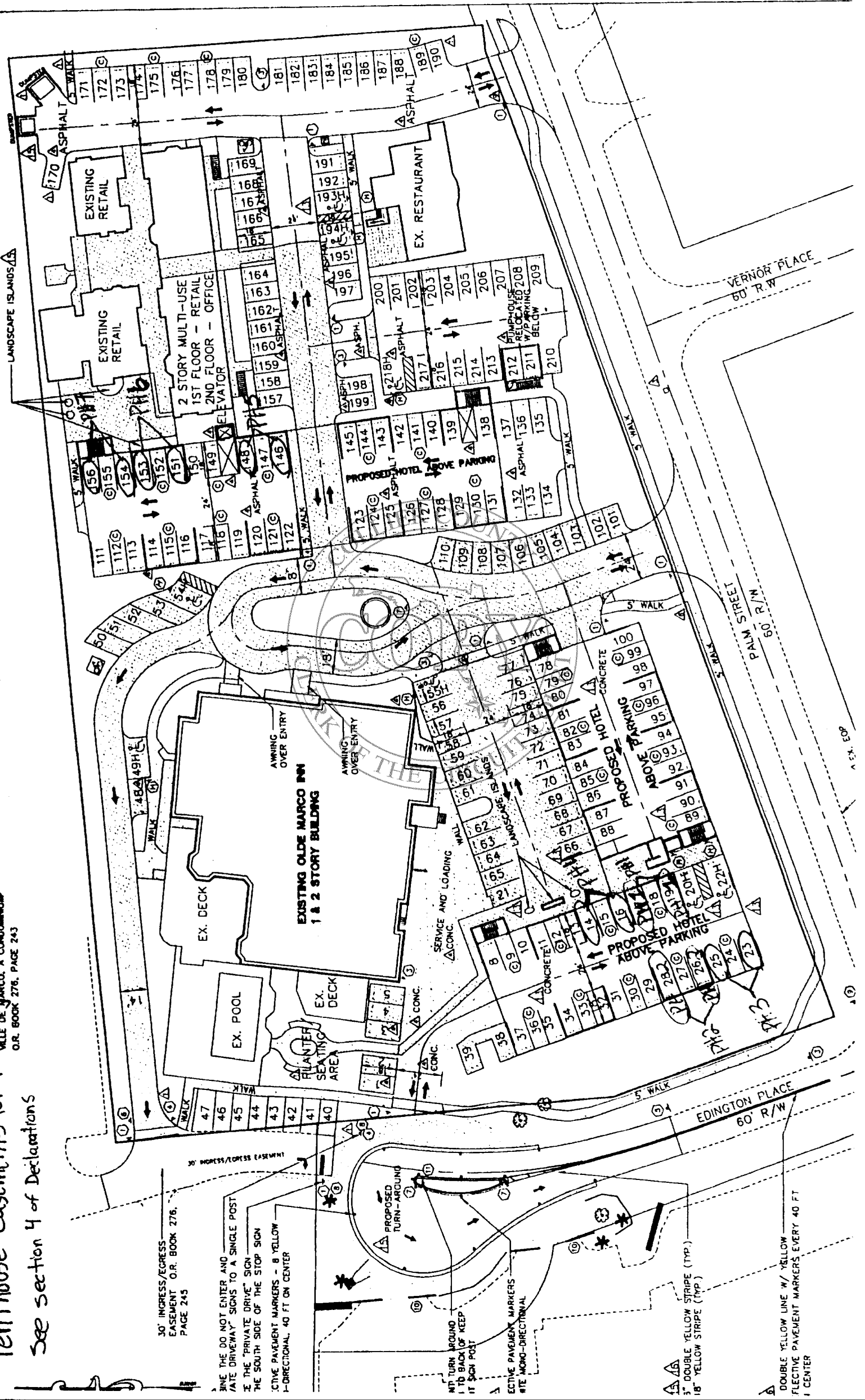
EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
ELEVATIONS FOR BUILDINGS #140 & #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897



Penthouse easements for Parking identified as PH 1 - PH 4 in space on subdivision.  
 O.R. BOOK 276, PAGE 243

See section 4 of Declarations



30' INGRESS/EGRESS  
 EASEMENT O.R. BOOK 276,  
 PAGE 243

SINE THE DO NOT ENTER AND  
 RATE DRIVEWAY" SIGNS TO A SINGLE POST  
 E THE "PRIVATE DRIVE" SIGN  
 THE SOUTH SIDE OF THE STOP SIGN  
 CTIVE PAVEMENT MARKERS - 8 YELLOW  
 I-DIRECTIONAL, 40 FT ON CENTER

W/ TURN AROUND  
 1 TO BACK OF KEEP  
 IT SIGN POST

ECTIVE PAVEMENT MARKERS  
 ITE MONO-DIRECTIONAL

3" DOUBLE YELLOW STRIPE (TYP.)  
 18" YELLOW STRIPE (TYP.)

DOUBLE YELLOW LINE W/ YELLOW  
 FLECTIVE PAVEMENT MARKERS EVERY 40 FT  
 CENTER

# **Olde Marco, A Condominium Estimated Operating Budget**

<b>EXPENSE ITEM</b>	<b>Per Unit Monthly</b>	<b>Per Unit Quarterly</b>	<b>Annual Budget</b>
Association Management Fee	\$40.00	\$120.00	\$24,480.00
Grounds Maintenance	\$22.45	\$67.35	\$13,740.00
Insurance	\$57.45	\$172.35	\$35,160.00
Garbage Pickup	\$21.53	\$64.58	\$13,174
Pest Control	\$4.31	\$12.94	\$2,640.00
Water	\$44.53	\$133.58	\$27,250.00
Sewer	\$26.14	\$78.43	\$16,000.00
Building Supplies & Maintenance	\$14.71	\$44.12	\$9,000.00
Legal & Accounting	\$11.44	\$34.31	\$7,000.00
Property Taxes	\$42.16	\$126.47	\$25,800.00
Elevator Maintenance	\$7.25	\$21.76	\$4,440.00
<b>Subtotal Operating</b>	<b>\$291.97</b>	<b>\$875.89</b>	<b>\$178,684.00</b>
<b>Statutory Reserves</b>			
Roof	\$9.82	\$29.46	\$6,010.64
Re-painting	\$9.58	\$28.74	\$5,860.99
Paving/resurfacing	\$3.12	\$9.36	\$1,908.14
<b>Subtotal Reserves</b>	<b>\$22.52</b>	<b>\$67.56</b>	<b>\$13,779.77</b>
<b>GRAND TOTAL</b>	<b>\$314.49</b>	<b>\$943.45</b>	<b>\$192,463.77</b>

The specific calculations used to determine the per-unit reserve amounts in this budget, include assumptions of future value increase of 3% per year in costs and a 6% projected rate of interest on assessments pooled, and are as follows:

#### Roof Replacement Reserve Calculation

Estimated cost per unit to re-roof (1/51 each of 75% of roofs)	\$6,010.64
Divided by 25 years estimated life	25 years
Estimated cost per year	\$117.85
Division by 12 months	12 months
Estimated cost per unit/per month	\$9.82

#### Building Re-Painting Reserve Calculation

Estimated cost per unit to re-paint	\$5,860.99
Divided by 7 years estimated life	7 years
Estimated cost per year	\$114.92
Division by 12 months	12 months
Estimated cost per unit/per month	\$9.58

#### Paving/Resurfacing Reserve Calculation

Estimated cost per unit to resurface	\$1,908.14
Divided by 10 years estimated life	10 years
Estimated cost per year	\$37.41
Division by 12 months	12 months
Estimated cost per unit/per month	\$3.12

These reserves are mandated by statute unless waived.

If statutory reserves were not waived, the quarterly assessment for the common expenses for each unit would be as stated in the budget, plus reserves for pavement resurfacing, roof replacement and building repainting, for a total quarterly expense of \$943.45.

#### MONTHLY, QUARTERLY AND ANNUAL MAINTENANCE EXPENSES OF UNIT OWNERS

Unit No.	Common Expenses	Monthly	Quarterly	Annually
All	1.96%	\$314.48	\$943.45	\$3,773.80

ASSESSMENTS ARE PAYABLE MONTHLY. Refer to the Bylaws.

THE AMOUNTS SET FORTH ABOVE WILL BE THE INITIAL ASSESSMENTS. THE DEVELOPER DOES NOT GUARANTEE THAT ASSESSMENTS WILL NOT EXCEED \$314.48 PER MONTH, OR \$943.45 PER QUARTER.

BY-LAWS OF

## OLDE MARCO CONDOMINIUM ASSOCIATION, INC.

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

1. **Identity.** These are the By-Laws of Olde Marco Condominium Association, Inc. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain condominium located in Collier County, Florida, and known as Olde Marco, A Condominium (the "Condominium").
  - 1.1 **Principal Office.** The principal office of the Association shall be at 100 Palm St. Suite 300, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at the principal office, or at such other place as may be permitted by the Act from time to time.
  - 1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.
  - 1.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation.
2. **Definitions.** For convenience, the By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles." The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. **Members.**
  - 3.1 **Annual Meeting.** The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held during the month that shall fall one year following the date of filing of the Declaration, at such time, place and date as the board shall determine.
  - 3.2 **Special Meetings.** Special members' meeting shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association or upon receipt of a written application of ten percent (10%) of the voting interest to the

EXHIBIT

tabbies

D

Board under Section 718.112(e) Florida Statutes relating to the Budget and Section 718.112(k) Florida Statutes relating to recall of the Board. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act.

- 3.3 Notice of Meeting; Waiver of Notice. Written notice of a meeting of members, which shall incorporate an identification of agenda items and state the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property at least fourteen (14) continuous days preceding the meeting. The notice of the meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) days prior to the date of the meeting. Proof of posting shall be given by affidavit, and proof of mailing of the notice shall be given by affidavit or the retention of a post office certificate of mailing.

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

An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the address last furnished to the Association. No other proof of notice of a meeting shall be required.

- 3.3.1 Special Provisions Relating to Notice of Board of Directors. Regular election of the Board of Directors shall occur on the date of the annual meeting. In addition to the foregoing notice provisions, not less than sixty (60) days before a scheduled election, the Association shall mail or deliver to each Unit Owner entitled to vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Secretary not less than forty (40) days before a scheduled election. Together with the written notice and agenda as set forth in paragraph 3.3 hereof, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates.

- 3.4 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to vote in excess of 33-1/3% of the votes of members.

- 3.5 Voting.

- (a) Number of Votes. Except as provided in paragraph 3.10 hereof, and except when the vote is to be determined by a percentage of shares of ownership in the Condominium (as contemplated in specific portions of the Declaration), in any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy, if allowed, at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves. The occupancy and use restrictions may not be changed by vote, unless and until the property's zoning is changed to allow for residential use of the property.
- (c) Voting Member. If a Unit is owned by one person, the right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

3.6 Proxies. Votes may be cast in person but not by general proxy, but votes may be cast by limited proxies. However, limited proxies and general proxies may be used for purposes of establishing a quorum. Limited proxies may be used for votes taken to waive or reduce reserve accounts for capital expenditures and deferred maintenance; for votes

taken to waive financial statement requirements in accordance with the Act; for votes taken to amend the Declaration, Articles or these By-Laws; or for any other matter for which the members are required or permitted to vote. 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. Notwithstanding this Section 3.6, no proxy, limited or general, shall be used in the election of the Board of Directors.

Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as set forth in 3.5 above), name the person(s) voting the proxy and the person authorized to vote for such person(s) and filed with the Secretary of the Association before the appointed time of each meeting for which it is given. Each proxy shall also contain the date, time and place of the meeting for which it is given, and if a limited proxy, shall set forth the matter on which the proxy holder may vote and the manner in which the vote is to be cast. Holders of proxies need not be Unit Owners. Notwithstanding the form of proxy prescribed herein, such forms of limited proxy required by the Act as may be amended from time to time shall prevail where in conflict herewith.

- 3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.8 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
- (a) Call to order by President;
  - (b) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
  - (c) Proof of notice of the meeting or waiver of notice;
  - (d) Reading of minutes;
  - (e) Reports of officers;
  - (f) Reports of committees;

- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors to be elected;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

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

3.9 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

3.10 Action Without a Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

#### 4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than nine (9), directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as proved herein, from time to time upon majority vote of the membership, provided, however, that the number of Directors shall always be an odd number. Directors need not be Unit Owners.

4.2 Election of Directors. The election of Directors shall be conducted in the following manner:

- (a) Election of Directors shall be held at the annual members' meeting, except as provided herein to the contrary.



- (b) Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice of such desire to the Secretary of the Association not less than forty (40) days before a scheduled election. Thereafter, but not less than fourteen (14) days before the scheduled election, the Association shall mail or deliver, along with the second notice of meeting described in Section 3.3.1 hereof, a ballot which shall list all the candidates. Any Unit Owner or other eligible person properly serving notice of candidacy may request that the ballot and notice be accompanied by an information sheet provided by the candidate, which information sheet shall be no larger than 8-1/2 inches by 11 inches. Nominations for Directors and additional directorships created at the election meeting shall be those contained in the ballot only.
- (c) The election shall be by written ballot and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

#### 4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.16 hereof shall be filled by the Developer without the necessity of any meeting.
- (b) Any Director elected by the members (other than the Developer) may be removed by concurrence of a majority of the votes of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of the owners of all Units. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed. The conveyance of all Units owned by a Director in the Condominium (other than appointees of the Developer or Directors who were not Unit Owners) shall constitute the resignation of such Director.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by the members other than the Developer of the Condominium, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.
- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum

of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

- 4.4 Term. Except as provided herein to the contrary, the term of each Directors' service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided.
- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary; provided, however, in the event the organizational meeting shall follow the annual meeting in which the directors were newly elected or appointed, the notice of the annual meeting shall serve as notice of the organizational meeting.
- 4.6 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 shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency.
- 4.7 Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an

emergency.

- 4.7.1 Meetings, Special Assessments, Rules. Written notice of any meeting of Directors 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 Owner and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen-day (14-day) notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association.
- 4.7.2 Regular Assessments. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.
- 4.7.3 Unit Owner Attendance. Meetings of the Board of Directors and any committee thereof at which a quorum of the members of that committee is present shall be open to all Unit Owners. Unit Owners shall have the right to speak at such meetings with reference to all designated agenda items.
- 4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called, shall constitute such Director's waiver of notice of such meeting.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.10 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder.
- 4.11 Joinder in Meeting by Approval of Minutes. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at any meeting of the Board of Directors. A vote or abstention for each Director present shall be recorded in the minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable

Director to be counted as being present for purposes of quorum.

- 4.12 **Presiding Officer.** The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.13 **Order of Business.** If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Election of Chairman;
  - (b) Roll Call;
  - (c) Proof of due notice of meeting;
  - (d) Reading and disposal of any unapproved minutes;
  - (e) Reports of officers and committees;
  - (f) Election of Inspectors of Election;
  - (g) Election of officers;
  - (h) Unfinished business;
  - (i) New Business;
  - (j) Adjournment.

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

- 4.14 **Minutes of Meetings.** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 4.15 **Executive Committee; Other Committees.** The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in paragraphs (f) and (o) of Section 5 below.

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

- 4.16 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the board shall consist of four (4) Directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) seven (7) years after recording of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give such notice as required for election of directors as set forth under Section 4.2 hereof, a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

At the time that Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of Incorporation of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute books, including all minutes, and other books and records of the Association, if any.
- (e) Any house rules and regulations which have been promulgated.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association through the date of the turnover. The records shall be audited by an independent certified public accountant. All financial records shall be prepared in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amount of assessments. The financial records required hereunder may be provided not later than ninety (90) days after Unit Owners, other than the Developer, elect a majority of the Board of Directors.
- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the common Elements or is ostensibly part of the common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the

Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property.

- (k) A list of the names and addresses, of which the Developer had knowledge at any time in the development of the Condominium, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the Improvements and in the landscaping of the Condominium or Association Property.
- (l) Insurance policies.
- (m) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property.
- (n) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association.
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (p) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
- (q) Leases of the Common Elements and other Leases to which the Association is a party, if applicable.
- (r) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (s) All other contracts to which the Association is a party.

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

- (a) Operating and maintaining the Common Elements.

- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatory or signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association, or its designee.
- (g) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium Property.
- (k) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall exceed the highest amount permitted under the Act (as it may be amended from time to time) nor shall any fine be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine shall become a lien upon a Unit, unless permitted by the Act (as it may be amended from time to time).
- (n) Purchasing or leasing Units for use by resident superintendents and other similar persons.



- (o) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association-owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all of the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit; provided always, however, the Association shall take no action authorized in this paragraph without the prior written consent of the Developer as long as the Developer owns any Unit.
- (p) Contracting for the management and maintenance of the Condominium Property and authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the power and duties granted by the Condominium documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use (to the extent permitted by the Act).
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (s) Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units, not to exceed the maximum amount permitted by law from time to time in any one case.
- (t) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

## 6. Officers.

- 6.1 Executive Officers. The initial executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need to be Directors or Unit Owners), all of whom shall be elected by the Board of Directors (which may create and fill other offices as provided herein) and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the Vice-President of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- 6.6 Other. The Board of Directors may create additional offices from time to time and appoint persons to fill such offices, subject to removal at the discretion of the Board.
- 6.7 Developer Appointees. No officer appointed by the Directors designated by the Developer may be removed except as provided in Section 4.16 hereof and by law.
7. Compensation. Neither Directors nor officers shall receive compensation for their services as

such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or Officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

8. Resignations. Any Director or officer may resign their post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer or officers who were not Unit Owners) shall constitute a written resignation of such Director or officer.

9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

9.1 Budget.

- (a) Adoption by Board, Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(20) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of such Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing, and for any other item for which the deferred maintenance expense, or replacement cost exceeds \$10,000.00. The amount of reserves shall be computed by a means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each reserve item. Reserves shall not be required if the members of the Association have, by a majority vote of the total voting interest voting in person or by limited proxy at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Notwithstanding the foregoing, prior to turnover of control of the Association by the Developer to the Unit Owners pursuant to the Act and Section 4.16 hereof, the Developer may vote to waive reserves for the first two (2) years of operation of the Association.

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

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to the Unit Owners.
- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than a majority vote of all the Units (including Units owned by the Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.
- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation Assessments for improvements to the Condominium Property.
- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of a majority of Unit Owners other than the Developer.
- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 9.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special

meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

- 9.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceeding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the Amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 9.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.
- 9.3 Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after ten (10) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments.
- 9.4 Late Assessments. Assessments not paid within ten (10) days from the date due may bear interest from the date when due until paid at the then highest rate allowed by law. Additionally, the failure to pay any assessment within ten (10) days from the date due shall entitle the Association to levy a late charge against the defaulting Unit Owner, in such amount as the Board may determine from time to time in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late.
- 9.5 Depository. The depository of the Association shall be such bank or banks in the State as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited in the Association's name. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. Reserve funds shall be maintained in a separate account in the Association's name from operating funds.
- 9.6 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may

accelerate Assessments due for the remainder of the budget year upon filing a claim of lien therefore. The then unpaid balance of the Assessments for the balance of the accelerated period shall be due upon the date the claim of lien is filed.

- 9.7 **Enforcement of Assessments.** In the event an Assessment is not paid within ten (10) days of the date same shall be due and payable, the Association, through the Board of Directors, may proceed to enforce and collect said Assessments from the delinquent Unit Owner in any manner provided for by the Act, the Declaration and these By-Laws. Each Unit Owner shall be individually responsible for the payment of Assessments against his Unit and for the payment of reasonable attorneys' fees and costs incurred by the Association in the collection of sums due and enforcement of any lien held by the Association in accordance with the Act.
- 9.8 **Fidelity Bonds.** Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the board but not less than as required by 718.112(2)(j), Florida Statutes. The premiums on such bonds shall be paid by the Association as a Common Expense.
- 9.9 **Accounting Records and Reports.** The Association shall maintain accounting records in the State, according to the accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

No later than April 1, of the year following the end of a fiscal year, the Board shall mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months (i.e., the last completed fiscal year). The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- a. Cost for security;
- b. Professional and management fees and expenses;
- c. Taxes;
- d. Cost for recreation facilities;
- e. Expenses for refuse collection and utility services;

- f. Expense for lawn care;
- g. Cost for building maintenance and repair;
- h. Insurance costs;
- i. Administrative and salary expenses; and
- j. General reserves, maintenance reserves and depreciation reserves.

9.10 **Application of Payment.** All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.

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

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

11. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

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

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

12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

- (a) by not less than a majority of the votes of those members of the Association who are present or represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or

- (b) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
- (c) by not less than 100% of the entire Board of Directors.

However, under no circumstances may amendments be made to any condominium documents regarding change in the occupancy and use restrictions, unless and until the property's zoning is changed to allow for residential use of the property.

- 12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance except as required by the Act. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.
- 12.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
13. Rules and Regulations. Attached hereto as Schedule A and made a part hereof are initial Rules and Regulations concerning the use of portions of the condominium. The Board of Directors may, from time to time, modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional Rules and Regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
14. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
15. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.



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

- (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;
- (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;
- (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
- (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- (e) A copy of the current Rules and Regulations of the Association;
- (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.
- (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers;
- (h) All current insurance policies of the Association and the Condominium;
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- (j) Bills of sale or transfer for all property owned by the Association;
- (k) Accounting records for the Association and the accounting records for the Condominium, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not be limited to:
  - (1) Accurate, itemized, and detailed records for all receipts and expenditures.
  - (2) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
  - (3) All audits, review, accounting statements, and financial reports of the Association or Condominium.

- (4) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year;
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections, which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates.
- (m) All rental records where the Association is acting as agent for the rental of Units.
- (n) A copy of the current question and answer sheet as described by Section 718.504 of the Act.
- (o) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall be maintained in the County or at such other place as may be permitted by the Act (as it may be amended from time to time).

The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member.

17. Arbitration. Any disputes as defined under Section 718.1255 of the Act shall be resolved through non-binding arbitration conducted in accordance with said Section 718.1255 of the Act.

The foregoing was adopted as the By-Laws of Olde Marco Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, on the 13 day of Dec, 2003

Approved:

  
K. Patrick Kruchten, President

  
Demian M. Kruchten, Secretary

# ***RHODES & RHODES LAND SURVEYING, INC.***

**JOHN SCOTT RHODES, P.S.M.**

**THOMAS E. RHODES, P.S.M.**

**1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110**

**PHONE (239) 593-0570**

**FAX (239) 593-0581**

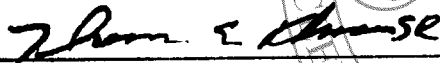
**Olde Marco, A Condominium**

## **CERTIFICATE OF SURVEYOR**

The undersigned, being a surveyor authorized to practice in the State of Florida, pursuant to Section 718.104(4) (e), Florida Statutes, hereby certifies that the construction of the improvements comprising all units on the Second Floor, Third Floor and Forth Floor within Building #160 of Olde Marco, a Condominium, is substantially complete, so that Exhibit "B" to the Declaration of Condominium, together with Provisions of the Declaration of Condominium describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements and of each unit within said building can be determined from these materials. The undersigned further certifies that all planned improvements, including but not limited to, landscaping, utility services and access to the units within said condominium, and common element facilities serving said building have been substantially completed.

**RHODES & RHODES LAND SURVEYING, INC.**

**FLORIDA BUSINESS AUTHORIZATION NO. LB 6897**



**Thomas E. Rhodes, Sr.**

**Professional Surveyor and Mapper**

**State of Florida, License Number 5854**

**NOT VALID WITHOUT THE SIGNATURE AND  
THE ORIGINAL RAISED SEAL OF A FLORIDA  
LICENSED SURVERYOR AND MAPPER**

**R&R FILE NO. 2003,94CON**

**DATE: 5/13/03**

**OR: 3291 PG: 0150**

LEGAL DESCRIPTION

BEING A PARCEL OF LAND THAT IS LYING IN SECTION 5, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND WHICH IS A PORTION OF BLOCKS 3 AND 15 OF THE PLAT AMENDED PLAT OF COLLIER CITY, AS RECORDED IN PLAT BOOK 1 PAGE 58 OF THE PUBLIC RECORDS OF SAID COLLIER COUNTY AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF EDINGTON PLACE (A 60 FEET ROADWAY) AND THE NORTH RIGHT-OF-WAY LINE OF PALM STREET (A 60 FEET ROADWAY), SAID POINT BEING THE POINT OF BEGINNING, THENCE CONTIGUOUS WITH THE SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) NORTH 19 DEGREES 23 MINUTES 45 SECONDS WEST, A DISTANCE OF 119.95 FEET; (2) THENCE NORTH 4 DEGREES 37 MINUTES 43 SECONDS WEST, A DISTANCE OF 258.13 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF "VILLE DE MARCO, A CONDOMINIUM" AS RECORDED OR BOOK 278 PAGE 243 OF SAID PUBLIC RECORDS, THENCE NORTH 84 DEGREES 57 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE, A DISTANCE OF 552.66 FEET TO THE INTERSECTION WITH THE WEST LINE OF "MARCO ISLAND VILLAS A CONDOMINIUM" AS RECORDED IN OR BOOK 440 PAGE 25 OF SAID PUBLIC RECORDS, SAID WEST LINE, A DISTANCE OF 243.61 FEET TO THE INTERSECTION OF THE SAID NORTH RIGHT-OF-WAY LINE OF PALM STREET; THENCE ALONG THE SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) SOUTH 84 DEGREES 59 MINUTES 22 SECONDS WEST, A DISTANCE OF 14.22 FEET; (2) THENCE SOUTH 70 DEGREES 34 MINUTES 45 SECONDS WEST, A DISTANCE OF 519.76 FEET TO THE POINT OF BEGINNING.

SAID DESCRIBED TRACT CONTAINING 168,376 64 SQUARE FEET (3.87 ACRES), MORE OR LESS.

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

NOTES

1. BEARINGS ARE BASED ON NORTHERLY RIGHT-OF-WAY LINE OF PALM STREET, AS BEING S 70°34'45" W.
2. ELEVATIONS ARE BASED ON N.G.V.D. 1929 UNLESS NOTED.
3. FIELD MEASUREMENTS ARE IN SUBSTANTIAL AGREEMENT WITH PLAT AND/OR DEED CALLS UNLESS NOTED.
4. SUBJECT TO EASEMENTS OF RECORD.
5. ABSTRACT NOT REVIEWED.
6. SURVEYORS CERTIFICATION DOES NOT APPLY TO MATTERS OF TITLE, ZONING, OR FREEDOM OF ENCUMBRANCES, AND IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
7. NO UNDERGROUND UTILITIES, FOUNDATIONS OR OTHER UNDERGROUND INSTALLATIONS WERE LOCATED UNLESS SHOWN.
8. NO OTHER PERSONS OR ENTITIES, OTHER THAN SHOWN, MAY RELY ON THIS SURVEY.
9. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED.
10. LEGAL DESCRIPTION HAS BEEN FURNISHED BY CLIENT.
11. FOR DETAILED ALTA SURVEY OF SUBJECT PROPERTY, SEE BOUNDARY SURVEY BY AMERICAN ENGINEERING CONSULTANTS, INC. DATED 08/31/01, HAVING REFERENCE NUMBER 36050101.

*Thomas E. Rhodes*

THOMAS E. RHODES, SR., P.S.M. #5854

BOUNDARY SURVEY

CERTIFIED TO:  
OLDE MARCO CONDOMINIUM ASSOCIATION, INC.  
THE LAW OFFICE OF DEMIAN M. KRUCHTEN, LLC  
ATTORNEYS' TITLE INSURANCE FUND  
FIRST INTEGRITY BANK, N.A.

RHODES & RHODES  
LAND SURVEYING, INC.  
LICENSE #LB 6897

1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110

(239) 593-0570 (239) 593-0581 FAX



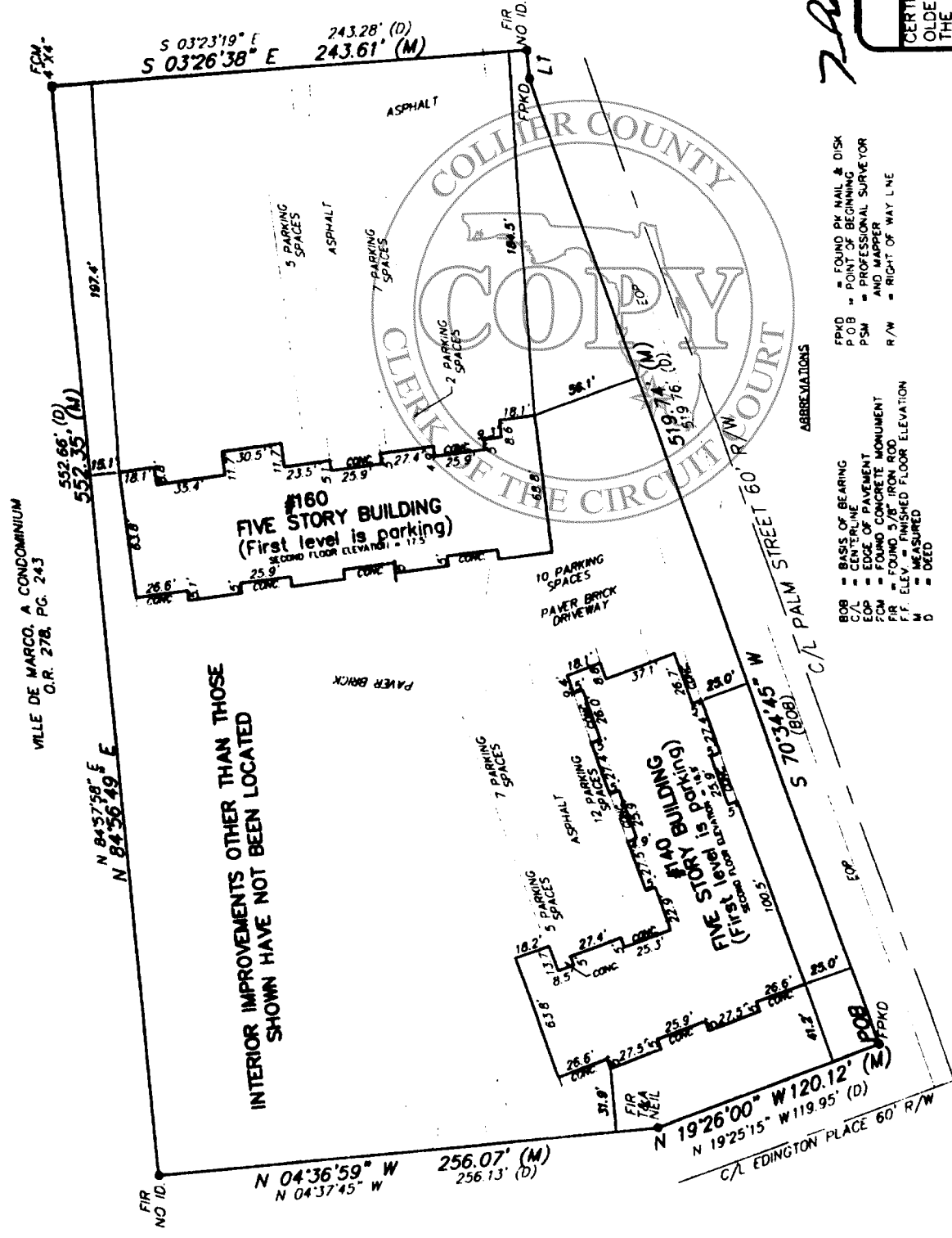
CERTIFICATION:

I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT CHAPTER 472.027, FLORIDA STATUTES.

FLOOD ZONE: 120067 801E & 803F  
ELEVATION 11'  
MAP REVISION DATE: AUGUST 3, 1992  
JULY 20, 1998

LINE TABLE	
LINE	BEARING
L1(D)	14.22° S 84°57'58" W
L2(M)	14.16° S 84°57'58" W

- ABBREVIATIONS
- BOB = BASIS OF BEARING
  - C/L = CENTER LINE
  - CONC = CONCRETE
  - FOAM = FOUND 3/4" IRON ROD
  - F.F. ELEV = FINISHED FLOOR ELEVATION
  - M = MEASURED
  - D = DEED
  - FPKD = FOUND PK NAIL & DISK
  - P.O.B. = POINT OF BEGINNING
  - PSM = PROFESSIONAL SURVEYOR AND MAPPER
  - R/W = RIGHT OF WAY LINE



# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

SHEET 1 OF 10



GRAPHIC SCALE

VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

## LEGAL DESCRIPTION

BEING A PARCEL OF LAND THAT IS LYING IN SECTION 5, TOWNSHIP 32 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AND WHICH IS A PORTION OF BLOCKS 3 AND 15 OF THE PLAT "AMENDED PLAT OF COLLIER CITY", AS RECORDED IN PLAT BOOK 1 PAGE 58 OF THE PUBLIC RECORDS OF SAID COLLIER COUNTY AND WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF EDWINGTON PLACE (A 60 FEET ROADWAY) AND THE NORTH RIGHT-OF-WAY LINE OF PALM STREET (A 60 FEET ROADWAY), SAID POINT BEING THE POINT OF BEGINNING, THENCE CONTIGUOUS WITH THE SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) NORTH 19 DEGREES 25 MINUTES 45 SECONDS WEST, A DISTANCE OF 119.95 FEET; (2) THENCE NORTH 4 DEGREES 37 MINUTES 45 SECONDS WEST, A DISTANCE OF 256.13 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF "VILLE DE MARCO, A CONDOMINIUM", AS RECORDED ON BOOK 278 PAGE 243 OF SAID PUBLIC RECORDS, THENCE NORTH 84 DEGREES 57 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE, A DISTANCE OF 552.66 FEET TO THE INTERSECTION WITH THE WEST LINE OF "MARCO INN VILLAS, A CONDOMINIUM", AS RECORDED IN OR BOOK 440 PAGE 25 OF SAID PUBLIC RECORDS, THENCE SOUTH 3 DEGREES 21 MINUTES 19 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 243.28 FEET TO THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF PALM STREET, THENCE ALONG THE SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) SOUTH 84 DEGREES 59 MINUTES 22 SECONDS WEST, A DISTANCE OF 14.22 FEET; (2) THENCE SOUTH TO DEGREES 34 MINUTES 45 SECONDS WEST, A DISTANCE OF 519.76 FEET TO THE POINT OF BEGINNING, SAID DESCRIBED TRACT CONTAINING 168376.64 SQUARE FEET (3.87 ACRES), MORE OR LESS

SUBJECT TO ANY EASEMENT AND/OR RESTRICTIONS OF RECORD.

## NOTES

1. BEARINGS ARE BASED ON NORTHERLY RIGHT-OF-WAY LINE OF PALM STREET, AS BEING 5 70°34'45" W.
2. ELEVATIONS ARE BASED ON N.G.V.D., 1929 UNLESS NOTED.
3. FIELD MEASUREMENTS ARE IN SUBSTANTIAL AGREEMENT WITH PLAT AND/OR DEED CALLS UNLESS NOTED.
4. SUBJECT TO EASEMENTS OF RECORD.
5. ABSTRACT NOT REVIEWED.
6. SURVEYOR'S CERTIFICATION DOES NOT APPLY TO MATTERS OF TITLE, ZONING, OR FREEDOM OF ENCUMBRANCES, AND IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
7. NO UNDERGROUND UTILITIES, FOUNDATIONS OR OTHER UNDERGROUND INSTALLATIONS WERE LOCATED UNLESS SHOWN.
8. NO OTHER PERSONS OR ENTITIES, OTHER THAN SHOWN, MAY RELY ON THIS SURVEY.
9. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED.
10. LEGAL DESCRIPTION HAS BEEN FURNISHED BY CLIENT.
11. FOR DETAILED ALTA SURVEY OF SUBJECT PROPERTY, SEE BOUNDARY SURVEY BY AMERICAN ENGINEERING CONSULTANTS, INC. DATED 08/31/01, HAVING REFERENCE NUMBER 36050101.

## CERTIFICATION:

I CERTIFY THAT THIS SURVEY WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT CHAPTER 472.027, FLORIDA STATUTES.

BLOOD ZONE: \_\_\_\_\_  
ZONE VE: \_\_\_\_\_  
ELEVATION 11: \_\_\_\_\_

PANEL NO.: \_\_\_\_\_  
120067 BOTE & 803F

MAP REVISION DATE: \_\_\_\_\_  
AUGUST 3, 1992  
JULY 20, 1998

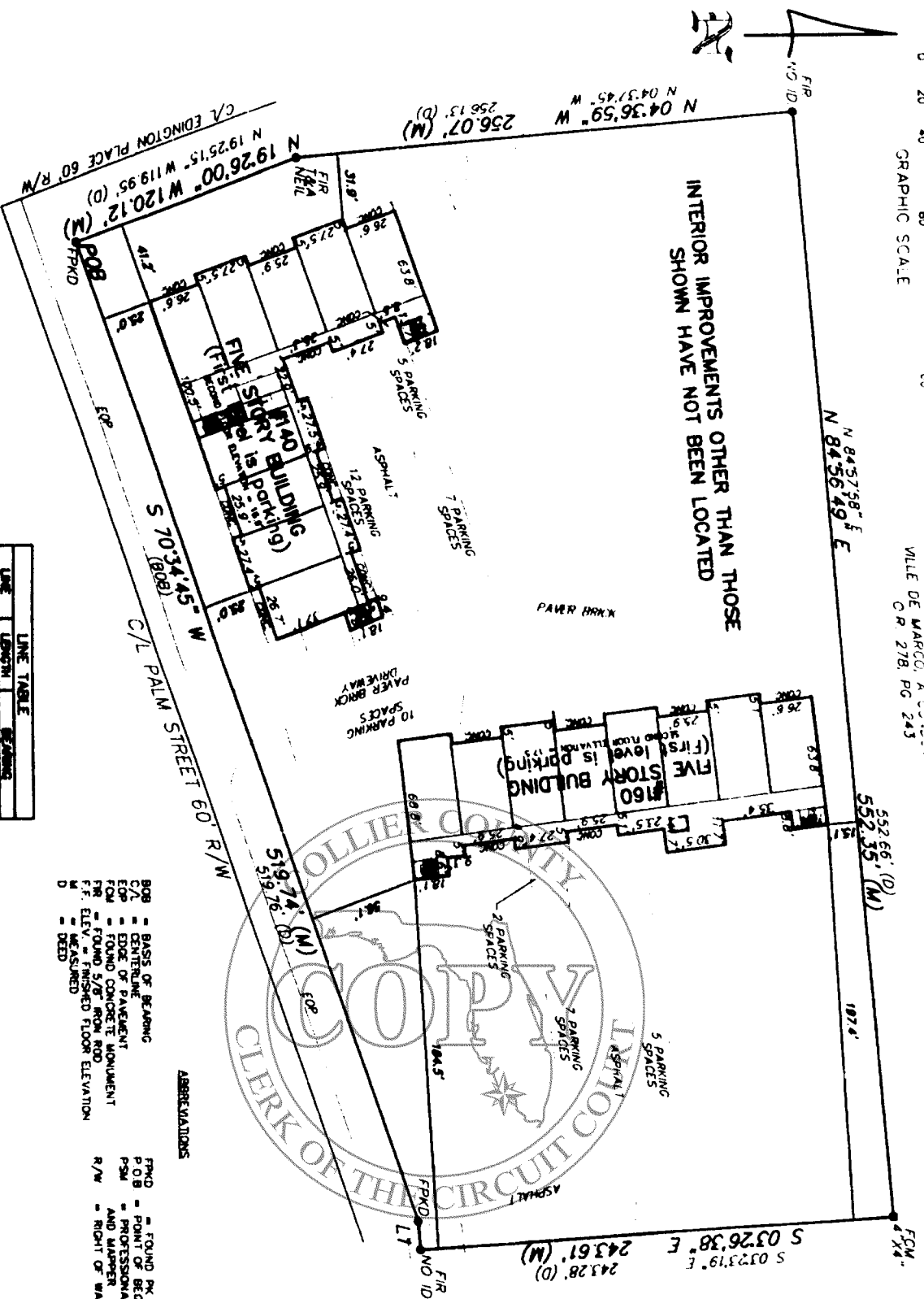
THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0561  
FLORIDA BUSINESS LICENSE NO. LB 6897

LINE	LENGTH	BEARING
L101	14.57	S 83°02'22" W
L102	14.15	S 80°11'00" W

ABBREVIATIONS  
BOB = BASES OF BEARING  
C/L = CENTERLINE  
EOP = EDGE OF PAVEMENT  
FOM = FOUND CONCRETE MONUMENT  
FIR = FOUND 5/8" ROD ROD  
F.F. ELEV. = FINISHED FLOOR ELEVATION  
D = DEED  
FPOD = FOUND BY NAIL & DISK  
POB = POINT OF BEGINNING  
PSM = PROFESSIONAL SURVEYOR  
R/W = RIGHT OF WAY LINE

## ABBREVIATIONS

BOB = BASES OF BEARING  
C/L = CENTERLINE  
EOP = EDGE OF PAVEMENT  
FOM = FOUND CONCRETE MONUMENT  
FIR = FOUND 5/8" ROD ROD  
F.F. ELEV. = FINISHED FLOOR ELEVATION  
D = DEED  
FPOD = FOUND BY NAIL & DISK  
POB = POINT OF BEGINNING  
PSM = PROFESSIONAL SURVEYOR  
R/W = RIGHT OF WAY LINE



INTERIOR IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED

EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
BOUNDARY SURVEY & SITE PLAN  
BUILDING #160  
"ASBUILT"

THOMAS E. RHODES, SR., P.S.M. #5854

# OLDE MARCO, A CONDOMINIUM,



VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

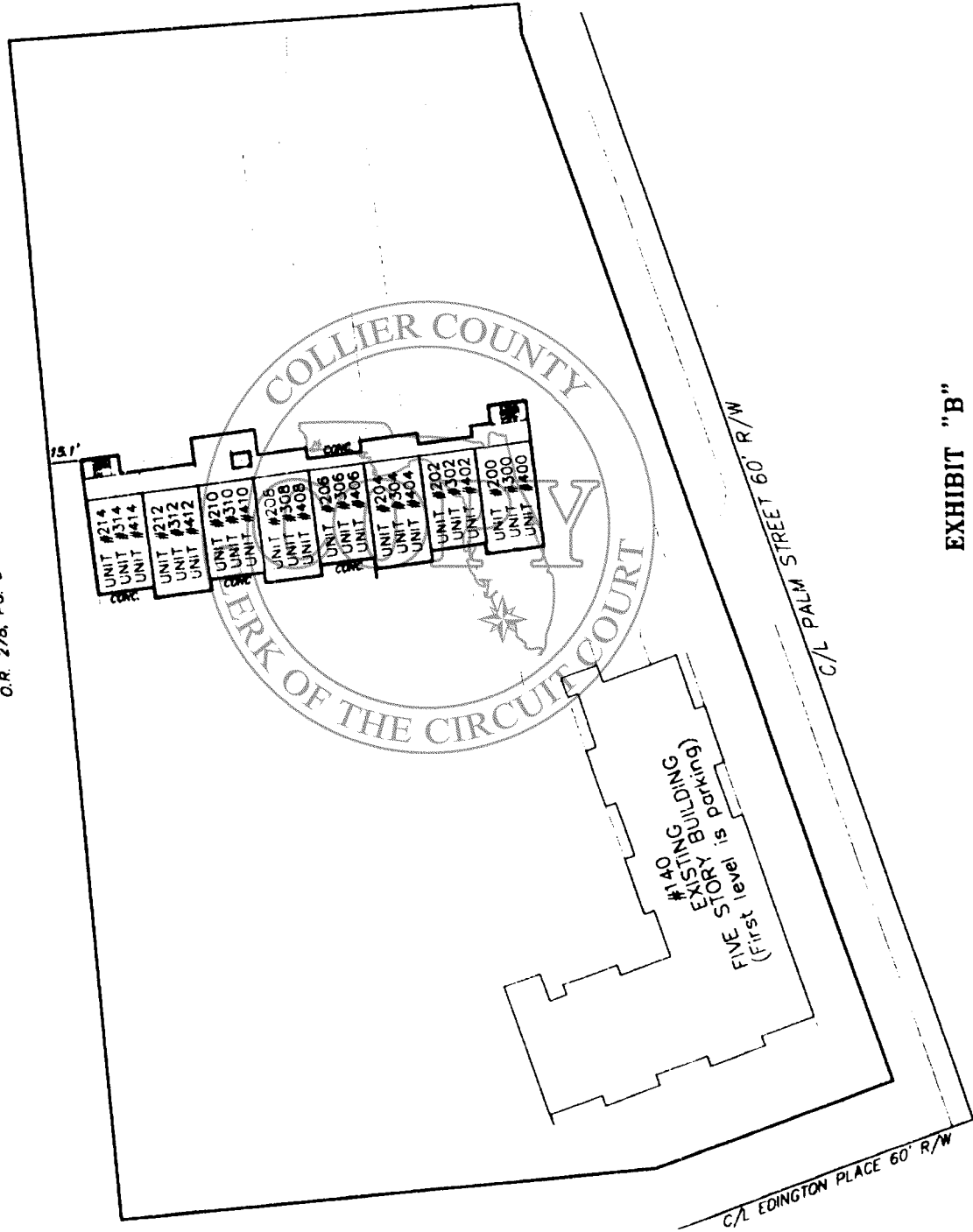


EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM,  
PLOT PLAN  
BUILDING #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

# CONDOMINIUM BOOK

# CONDOMINIUM BOOK



# CONDOMINIUM BOOK

# CONDOMINIUM BOOK

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 4 OF 10

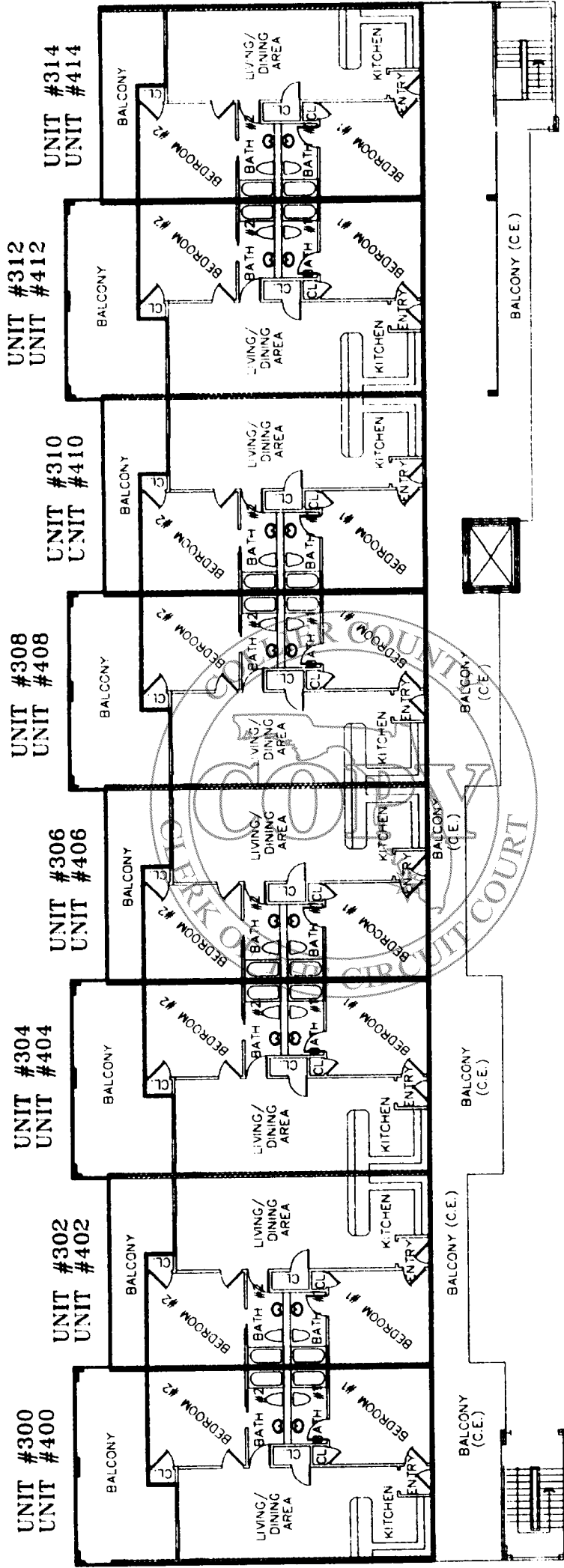


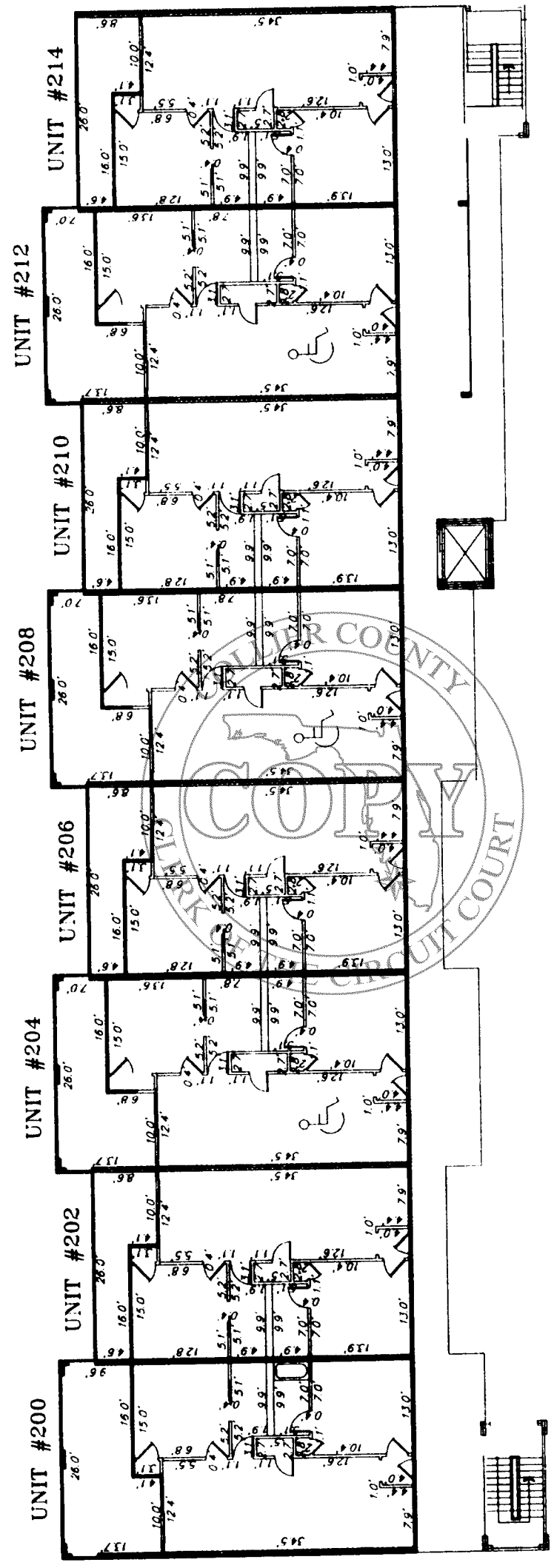
EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
THIRD & FORTH FLOOR PLANS  
BUILDING #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OR: 3291 PG: 0155



# OLDE MARCO, A CONDOMINIUM



NOTES  
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED.



EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND FLOOR UNIT DIMENSION PLAN  
BUILDING #160  
\*ASBUILT\*

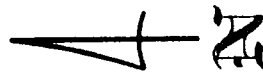
THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897



# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 7 OF 10



VILLE DE MARCO, A CONDOMINIUM  
O.R. 278, PG. 243

MARCO ISLAND VILLAS  
A CONDOMINIUM  
O.R. 440, PG. 25

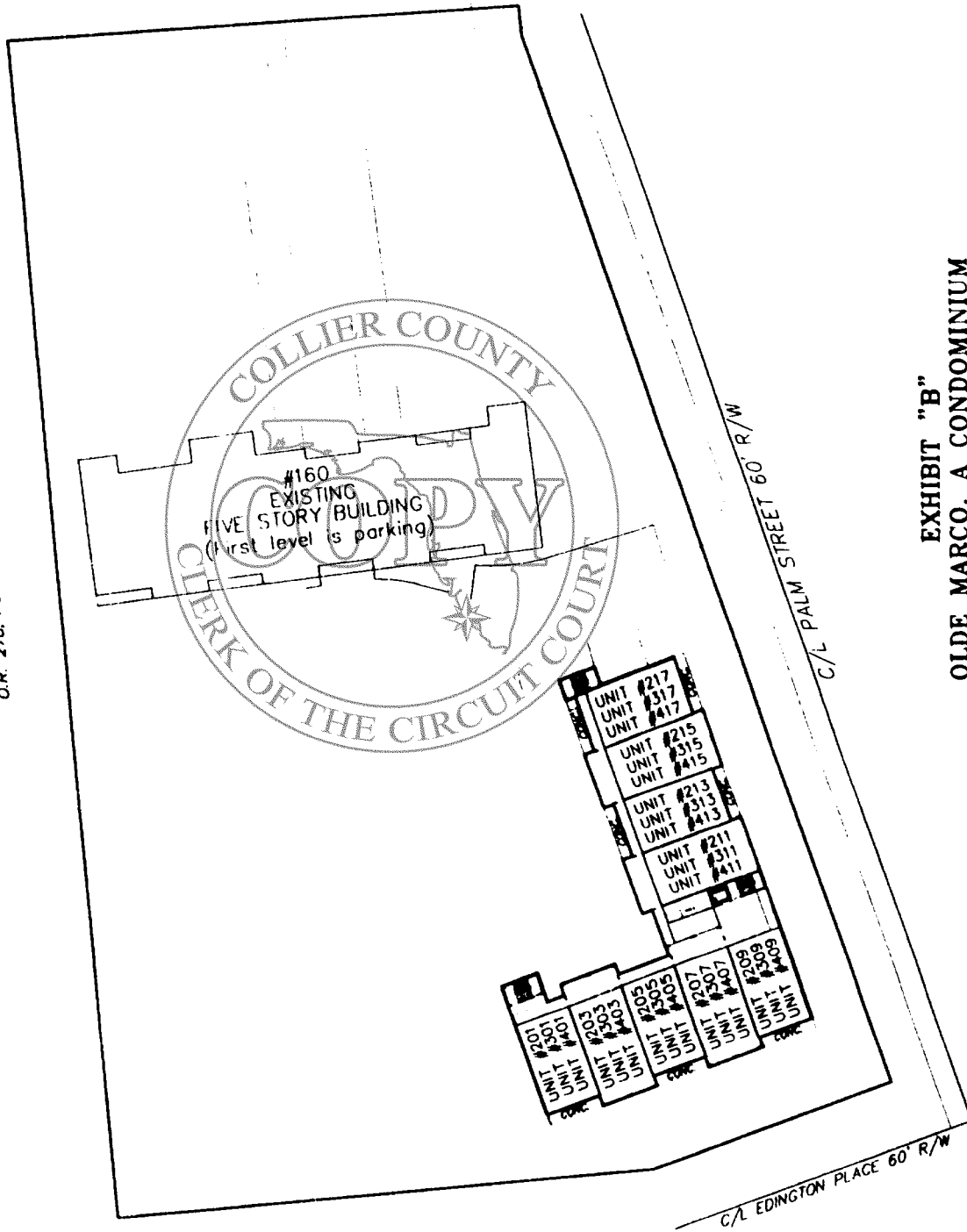
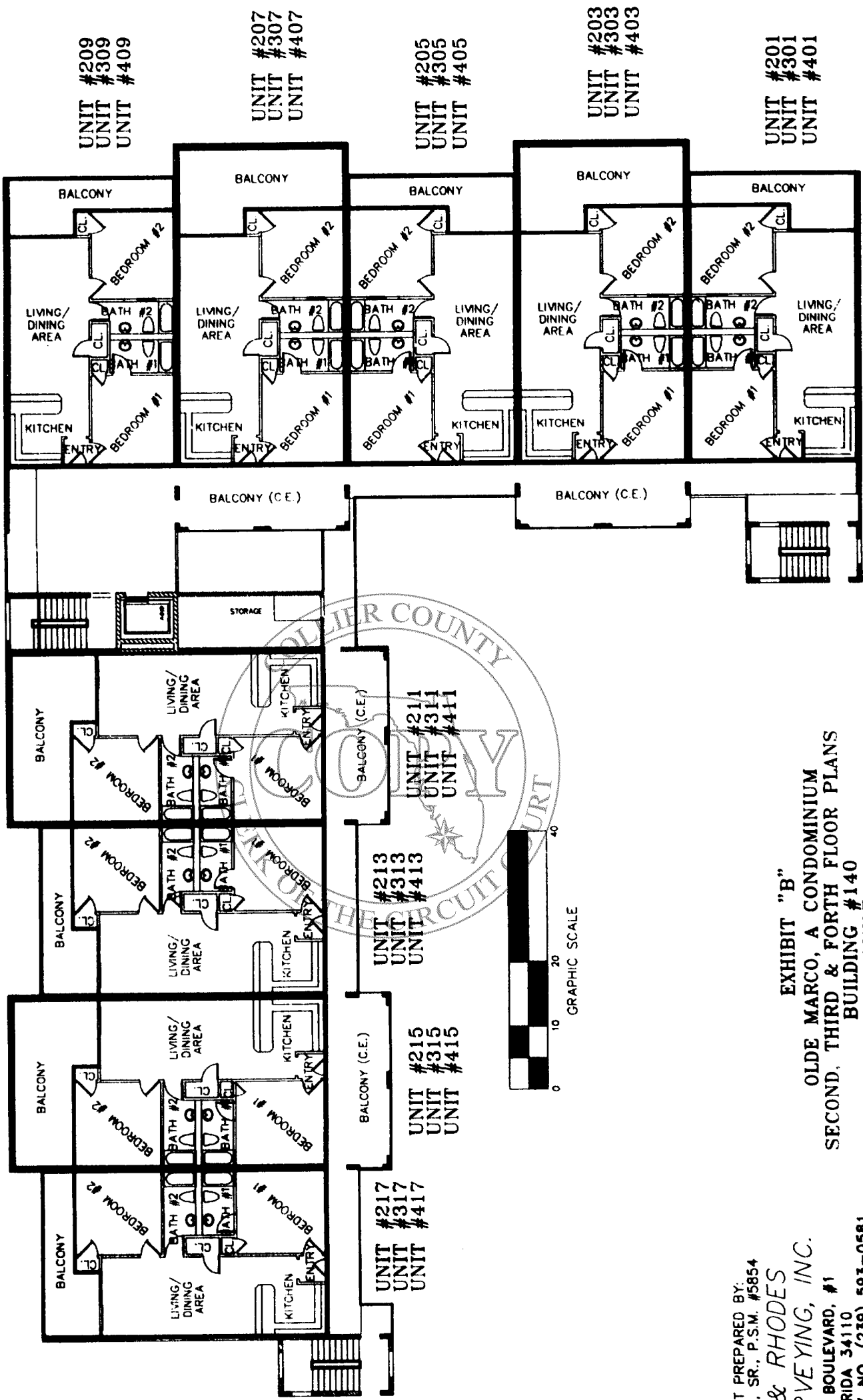


EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
PLOT PLAN  
BUILDING #140  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OR: 3291 PG: 0158

OLDE MARCO, A CONDOMINIUM



THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

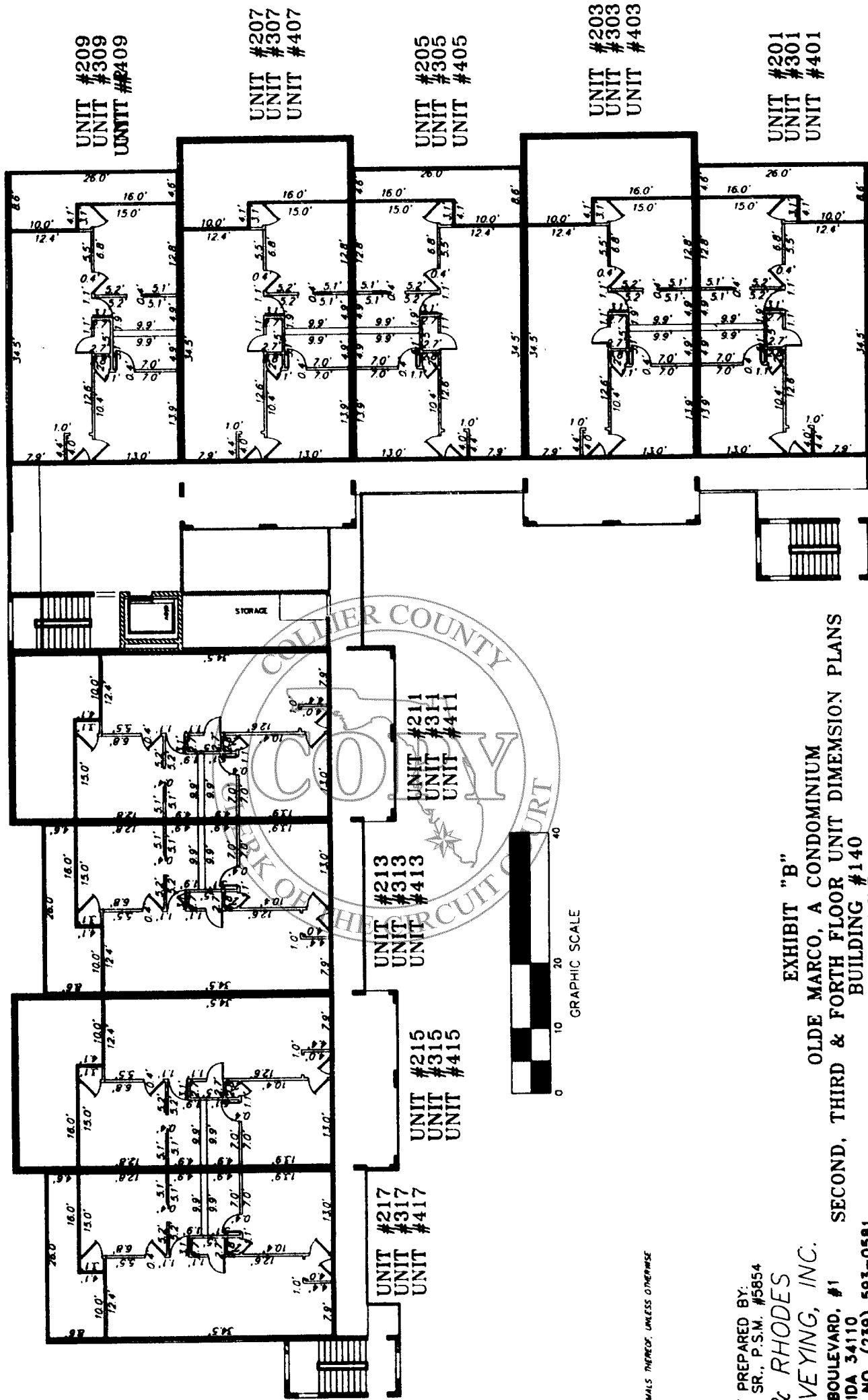
EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND, THIRD & FORTH FLOOR PLANS  
BUILDING #140  
\*ASBUILT\*

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 9 OF 10

OR: 3291 PG: 0160



NOTES  
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854

RHODES & RHODES  
LAND SURVEYING, INC.

1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

EXHIBIT "B"  
OLDE MARCO, A CONDOMINIUM  
SECOND, THIRD & FORTH FLOOR UNIT DIMENSION PLANS  
BUILDING #140  
\*ASBUILT\*

# OLDE MARCO, A CONDOMINIUM

CONDOMINIUM BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

SHEET 10 OF 10

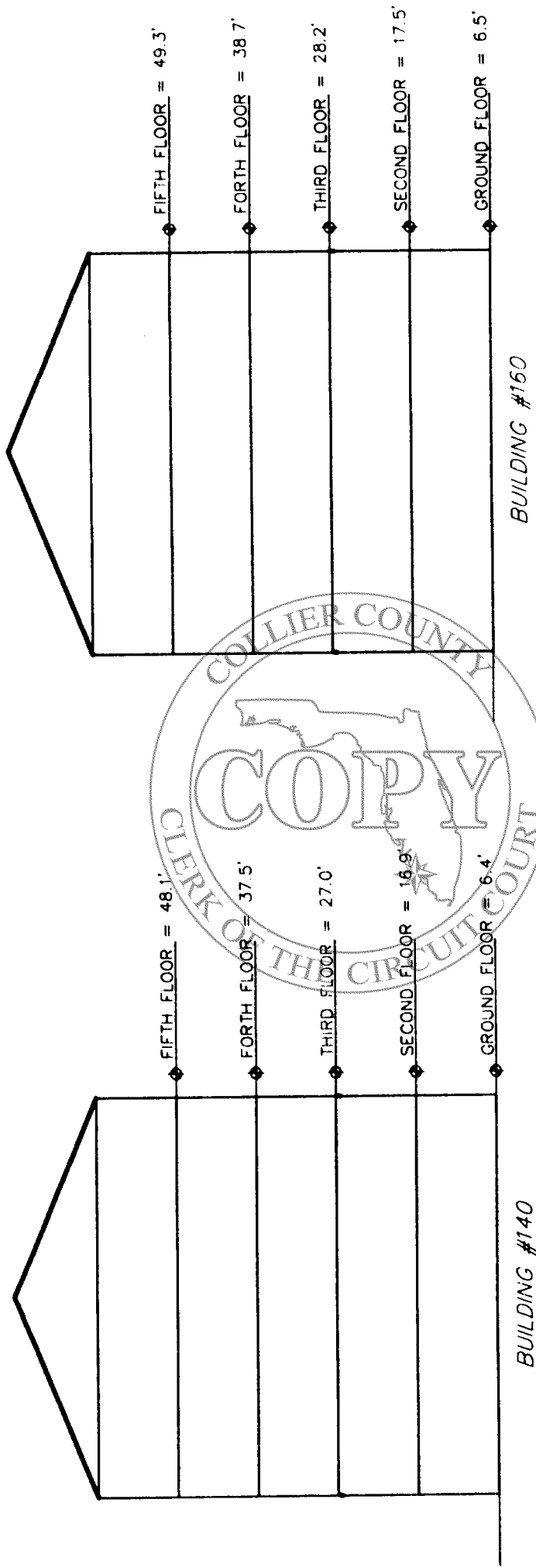


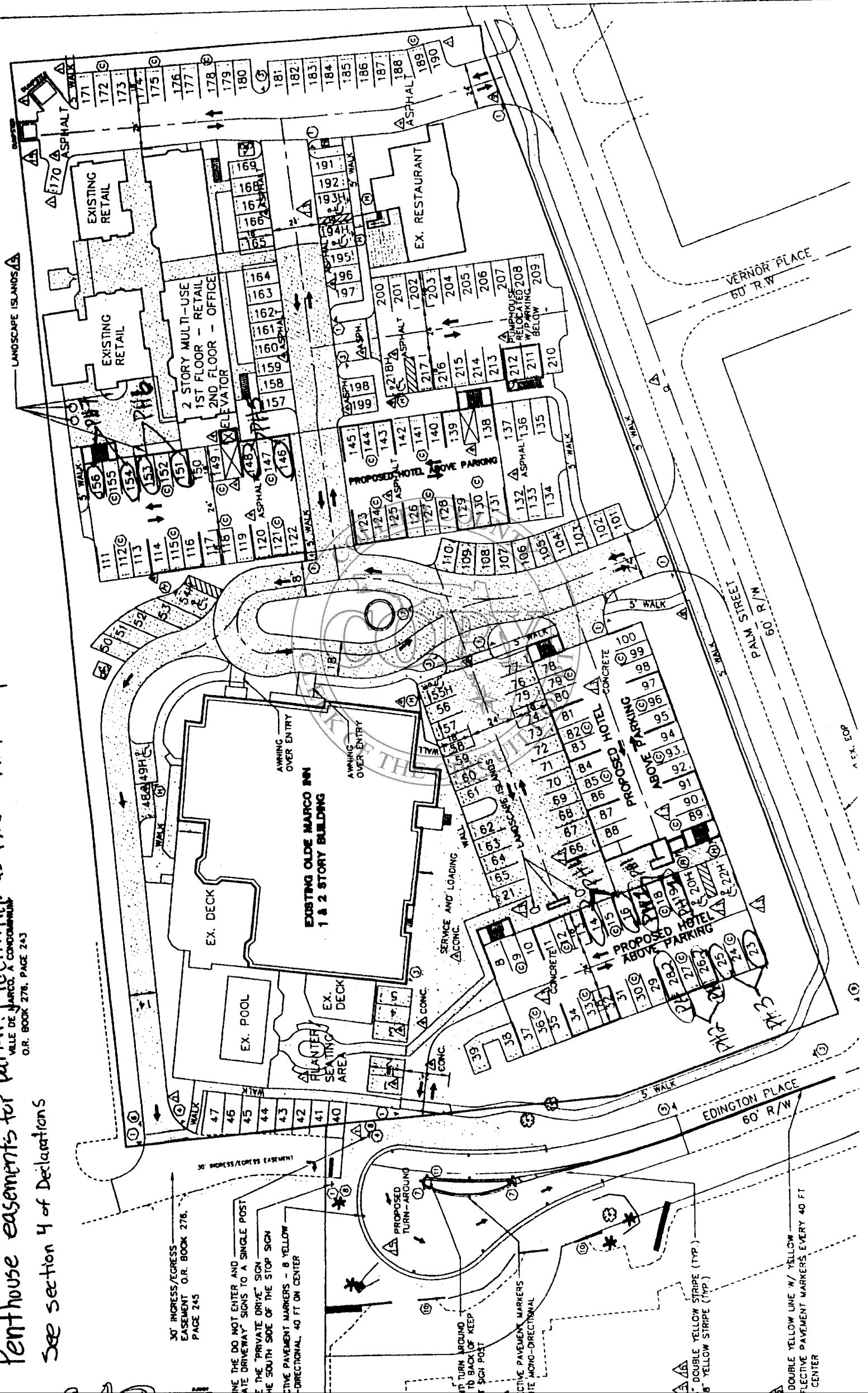
EXHIBIT "B"

OLDE MARCO, A CONDOMINIUM  
ELEVATIONS FOR BUILDINGS #140 & #160  
\*ASBUILT\*

THIS INSTRUMENT PREPARED BY:  
THOMAS E. RHODES, SR., P.S.M. #5854  
**RHODES & RHODES**  
LAND SURVEYING, INC.  
1440 RAIL HEAD BOULEVARD, #1  
NAPLES, FLORIDA 34110  
(239) 593-0570 FAX NO. (239) 593-0581  
FLORIDA BUSINESS LICENSE NO. LB 6897

OR: 3291 PG: 0161

See section 4 of Declarations



ARTICLES OF INCORPORATIONFOROLDE MARCO CONDOMINIUM ASSOCIATION, INC.

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

ARTICLE 1NAME

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

ARTICLE 2PURPOSE

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

ARTICLE 3DEFINITIONS

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



ARTICLE 4POWERS

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

- 4.1 General. The Association shall have all of the common law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 Enumeration. The Association shall have the powers and duties set forth in the Act and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property.
  - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.
  - (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and Unit Owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners.
  - (f) To approve or disapprove the leasing, transfer, ownership and possession of the Units as may be provided by the Declaration.
  - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Condominium Property, subject, however, to the limitation regarding assessing Units owned by the Developer for fees and expenses relating in any way to claims or potential claims against the Developer as set forth in the Declaration and/or By-Laws.
  - (h) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by

performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (I) To employ personnel to perform the services required for the proper operation of the Condominium.

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

## ARTICLE 5

### MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who are members at the time of such termination, and their successors and assigns. New members shall deliver a true copy of the recorded Deed or other instrument of acquisition of title to the Association.
- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned.
- 5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make

provision for regular and special meetings of members other than the annual meeting.

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

INCORPORATOR

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

<u>NAME</u>	<u>ADDRESS</u>
Demian M. Kruchten, Esq.	2662 Airport Road, South Naples, Florida 34112

ARTICLE 8

OFFICERS

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

<u>President:</u>	K. Patrick Kruchten 100 Palm Street Marco Island, FL 34145
<u>Vice-President:</u>	Geoff Gempeler 100 Palm Street Marco Island, FL 34145
<u>Secretary:</u>	Demian M. Kruchten 100 Palm Street Marco Island, FL 34145
<u>Treasurer:</u>	Peter Kruchten

100 Palm Street  
Marco Island, FL 34145

## ARTICLE 9

### DIRECTORS

- 9.1 Number and Qualifications. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors need not be members of the Association.
- 9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 9.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 9.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 9.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

#### NAME

#### ADDRESS

Geoff Gempeler	100 Palm Street Marco Island, FL 34145
K. Patrick Kruchten	100 Palm Street Marco Island, FL 34145
Bruce Carr	100 Palm Street Marco Island, FL 34145
Peter Kruchten	100 Palm Street Marco Island, FL 34145

## ARTICLE 10

### INDEMNIFICATION

- 10.1 Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.
- 10.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 10.3 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article 10.
- 10.4 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.
- 10.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have

the power to indemnify him against such liability under the provisions of this Article.

- 10.6 Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 10 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

## ARTICLE 11

### BY-LAWS

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

## ARTICLE 12

### AMENDMENTS

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

- 12.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 12.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 12.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers", without the approval in writing of all members. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer, or an affiliate, successor or assign of the Developer, unless the Developer shall join in the execution of the amendment. No amendment to the paragraph 12.3 shall be effective.
- 12.4 Developer Amendments. To the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.
- 12.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Collier County, Florida.

ARTICLE 13INITIAL REGISTERED OFFICE:  
ADDRESS AND NAME OF REGISTERED AGENT

The initial principal office of this corporation shall be at 100 Palm Street, Marco Island, Florida, 34145 with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent shall be Demian M. Kruchten, whose address is 2662 Airport Road, South, Naples, Florida 34112.

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

DM Kruchten  
Demian M. Kruchten, Esq.

STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared Demian M. Kruchten, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 13<sup>th</sup>  
day of May, 2003.

J A Eichen  
NOTARY PUBLIC  
My Commission Expires:



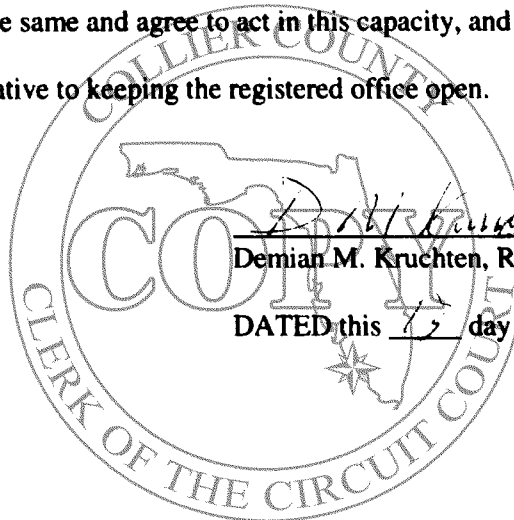
Jacqueline A. Eichen  
MY COMMISSION # CC987752 EXPIRES  
January 7, 2005

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

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

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the unincorporated portion of the County of Collier, State of Florida, the corporation named in the said Articles has named Demian M. Kruchten, Esq., whose address is 2662 Airport Road, South, Naples, Florida 34112 as its statutory registered agent.

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



Demian M. Kruchten  
Demian M. Kruchten, Registered Agent

DATED this 12 day of May, 2003.



BY-LAWS OF

## OLDE MARCO CONDOMINIUM ASSOCIATION, INC.

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

1. Identity. These are the By-Laws of Olde Marco Condominium Association, Inc. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain condominium located in Collier County, Florida, and known as Olde Marco, A Condominium (the "Condominium").
  - 1.1 Principal Office. The principal office of the Association shall be at 100 Palm St. Marco Island, FL 34145, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at the principal office, or at such other place as may be permitted by the Act from time to time.
  - 1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.
  - 1.3 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation Not for Profit," and the year of incorporation.
2. Definitions. For convenience, the By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles." The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. Members.
  - 3.1 Annual Meeting. The annual members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held during the month that shall fall one year following the date of filing of the Declaration, at such time, place and date as the board shall determine.
  - 3.2 Special Meetings. Special members' meeting shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association or upon receipt of a written application of ten percent (10%) of the voting interest to the

Board under Section 718.112(e) Florida Statutes relating to the Budget and Section 718.112(k) Florida Statutes relating to recall of the Board. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act.

- 3.3 **Notice of Meeting; Waiver of Notice.** Written notice of a meeting of members, which shall incorporate an identification of agenda items and state the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property at least fourteen (14) continuous days preceding the meeting. The notice of the meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than fourteen (14) days prior to the date of the meeting. Proof of posting shall be given by affidavit, and proof of mailing of the notice shall be given by affidavit or the retention of a post office certificate of mailing.

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

An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the address last furnished to the Association. No other proof of notice of a meeting shall be required.

- 3.3.1 **Special Provisions Relating to Notice of Board of Directors.** Regular election of the Board of Directors shall occur on the date of the annual meeting. In addition to the foregoing notice provisions, not less than sixty (60) days before a scheduled election, the Association shall mail or deliver to each Unit Owner entitled to vote, a first notice of the date of the election. Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Secretary not less than forty (40) days before a scheduled election. Together with the written notice and agenda as set forth in paragraph 3.3 hereof, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates.

- 3.4 **Quorum.** A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to vote in excess of 33-1/3% of the votes of members.

- 3.5 **Voting.**

- (a) Number of Votes. Except as provided in paragraph 3.10 hereof, and except when the vote is to be determined by a percentage of shares of ownership in the Condominium (as contemplated in specific portions of the Declaration), in any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy, if allowed, at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves. The occupancy and use restrictions may not be changed by vote, unless and until the property's zoning is changed to allow for residential use of the property.
- (c) Voting Member. If a Unit is owned by one person, the right to vote shall be established by the roster of members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

3.6 Proxies. Votes may be cast in person but not by general proxy, but votes may be cast by limited proxies. However, limited proxies and general proxies may be used for purposes of establishing a quorum. Limited proxies may be used for votes taken to waive or reduce reserve accounts for capital expenditures and deferred maintenance; for votes

taken to waive financial statement requirements in accordance with the Act; for votes taken to amend the Declaration, Articles or these By-Laws; or for any other matter for which the members are required or permitted to vote. 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. Notwithstanding this Section 3.6, no proxy, limited or general, shall be used in the election of the Board of Directors.

Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as set forth in 3.5 above), name the person(s) voting the proxy and the person authorized to vote for such person(s) and filed with the Secretary of the Association before the appointed time of each meeting for which it is given. Each proxy shall also contain the date, time and place of the meeting for which it is given, and if a limited proxy, shall set forth the matter on which the proxy holder may vote and the manner in which the vote is to be cast. Holders of proxies need not be Unit Owners. Notwithstanding the form of proxy prescribed herein, such forms of limited proxy required by the Act as may be amended from time to time shall prevail where in conflict herewith.

- 3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.
- 3.8 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:
- (a) Call to order by President;
  - (b) Appointment by the President of a chairman of the meeting (who need not be a member or a director);
  - (c) Proof of notice of the meeting or waiver of notice;
  - (d) Reading of minutes;
  - (e) Reports of officers;
  - (f) Reports of committees;

- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors to be elected;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

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

- 3.9 **Minutes of Meeting.** The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 3.10 **Action Without a Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

#### 4. **Directors.**

- 4.1 **Membership.** The affairs of the Association shall be governed by a Board of not less than three (3) nor more than nine (9), directors, the exact number to be determined in the first instance in the Articles, and, thereafter, except as proved herein, from time to time upon majority vote of the membership, provided, however, that the number of Directors shall always be an odd number. Directors need not be Unit Owners.
- 4.2 **Election of Directors.** The election of Directors shall be conducted in the following manner:
- (a) Election of Directors shall be held at the annual members' meeting, except as provided herein to the contrary.

- (b) Any Unit Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice of such desire to the Secretary of the Association not less than forty (40) days before a scheduled election. Thereafter, but not less than fourteen (14) days before the scheduled election, the Association shall mail or deliver, along with the second notice of meeting described in Section 3.3.1 hereof, a ballot which shall list all the candidates. Any Unit Owner or other eligible person properly serving notice of candidacy may request that the ballot and notice be accompanied by an information sheet provided by the candidate, which information sheet shall be no larger than 8-1/2 inches by 11 inches. Nominations for Directors and additional directorships created at the election meeting shall be those contained in the ballot only.
- (c) The election shall be by written ballot and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

#### 4.3 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.16 hereof shall be filled by the Developer without the necessity of any meeting.
- (b) Any Director elected by the members (other than the Developer) may be removed by concurrence of a majority of the votes of the members at a special meeting of members called for that purpose or by written agreement signed by a majority of the owners of all Units. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed. The conveyance of all Units owned by a Director in the Condominium (other than appointees of the Developer or Directors who were not Unit Owners) shall constitute the resignation of such Director.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by the members other than the Developer of the Condominium, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.
- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum

of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

- 4.4 **Term.** Except as provided herein to the contrary, the term of each Directors' service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided.
- 4.5 **Organizational Meeting.** The organizational meeting of newly-elected or appointed Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary; provided, however, in the event the organizational meeting shall follow the annual meeting in which the directors were newly elected or appointed, the notice of the annual meeting shall serve as notice of the organizational meeting.
- 4.6 **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 shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency.
- 4.7 **Special Meetings.** Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an

emergency.

- 4.7.1 Meetings, Special Assessments, Rules. Written notice of any meeting of Directors 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 Owner and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen-day (14-day) notice shall be made by an affidavit executed by the Secretary of the Association and filed among the official records of the Association.
- 4.7.2 Regular Assessments. Notice of any meeting in which regular assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.
- 4.7.3 Unit Owner Attendance. Meetings of the Board of Directors and any committee thereof at which a quorum of the members of that committee is present shall be open to all Unit Owners. Unit Owners shall have the right to speak at such meetings with reference to all designated agenda items.
- 4.8 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called, shall constitute such Director's waiver of notice of such meeting.
- 4.9 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.10 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder.
- 4.11 Joinder in Meeting by Approval of Minutes. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at any meeting of the Board of Directors. A vote or abstention for each Director present shall be recorded in the minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable



Director to be counted as being present for purposes of quorum.

- 4.12 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.13 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Election of Chairman;
  - (b) Roll Call;
  - (c) Proof of due notice of meeting;
  - (d) Reading and disposal of any unapproved minutes;
  - (e) Reports of officers and committees;
  - (f) Election of Inspectors of Election;
  - (g) Election of officers;
  - (h) Unfinished business;
  - (i) New Business;
  - (j) Adjournment.

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

- 4.14 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.
- 4.15 Executive Committee; Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium Property, or (d) to exercise any of the powers set forth in paragraphs (f) and (o) of Section 5 below.

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

- 4.16 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the board shall consist of four (4) Directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) seven (7) years after recording of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give such notice as required for election of directors as set forth under Section 4.2 hereof, a meeting of the Unit Owners to elect such member or members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

At the time that Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of Incorporation of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute books, including all minutes, and other books and records of the Association, if any.
- (e) Any house rules and regulations which have been promulgated.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the Association, and source documents since the incorporation of the Association through the date of the turnover. The records shall be audited by an independent certified public accountant. All financial records shall be prepared in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amount of assessments. The financial records required hereunder may be provided not later than ninety (90) days after Unit Owners, other than the Developer, elect a majority of the Board of Directors.
- (h) Association funds or the control thereof.
- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the common Elements or is ostensibly part of the common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a Certificate, in affidavit form, of an officer of the

Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property.

- (k) A list of the names and addresses, of which the Developer had knowledge at any time in the development of the Condominium, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the Improvements and in the landscaping of the Condominium or Association Property.
- (l) Insurance policies.
- (m) Copies of any Certificates of Occupancy which may have been issued for the Condominium Property.
- (n) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association.
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (p) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
- (q) Leases of the Common Elements and other Leases to which the Association is a party, if applicable.
- (r) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (s) All other contracts to which the Association is a party.

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

- (a) Operating and maintaining the Common Elements.

- (b) Determining the expenses required for the operation of the Condominium and the Association.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Unit Owners to overrule the Board as provided in Section 13 hereof.
- (e) Maintaining bank accounts on behalf of the Association and designating the signatory or signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring Units or other property in the name of the Association, or its designee.
- (g) Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium Property.
- (k) Making repairs, additions and improvements to, or alterations of, the Condominium Property, and repairs to and restoration of the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall exceed the highest amount permitted under the Act (as it may be amended from time to time) nor shall any fine be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine shall become a lien upon a Unit, unless permitted by the Act (as it may be amended from time to time).
- (n) Purchasing or leasing Units for use by resident superintendents and other similar persons.

- (o) Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association-owned property; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed \$10,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all of the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit; provided always, however, the Association shall take no action authorized in this paragraph without the prior written consent of the Developer as long as the Developer owns any Unit.
- (p) Contracting for the management and maintenance of the Condominium Property and authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the power and duties granted by the Condominium documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use (to the extent permitted by the Act).
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (s) Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units, not to exceed the maximum amount permitted by law from time to time in any one case.
- (t) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

6. Officers.

- 6.1 Executive Officers. The initial executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need to be Directors or Unit Owners), all of whom shall be elected by the Board of Directors (which may create and fill other offices as provided herein) and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office, except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the Vice-President of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- 6.6 Other. The Board of Directors may create additional offices from time to time and appoint persons to fill such offices, subject to removal at the discretion of the Board.
- 6.7 Developer Appointees. No officer appointed by the Directors designated by the Developer may be removed except as provided in Section 4.16 hereof and by law.
7. Compensation. Neither Directors nor officers shall receive compensation for their services as

such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or Officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

8. **Resignations.** Any Director or officer may resign their post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer or officers who were not Unit Owners) shall constitute a written resignation of such Director or officer.

9. **Fiscal Management.** The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

9.1 **Budget.**

- (a) **Adoption by Board; Items.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(20) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of such Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing, and for any other item for which the deferred maintenance expense, or replacement cost exceeds \$10,000.00. The amount of reserves shall be computed by a means of a formula which is based upon the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each reserve item. Reserves shall not be required if the members of the Association have, by a majority vote of the total voting interest voting in person or by limited proxy at a duly called meeting of members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Notwithstanding the foregoing, prior to turnover of control of the Association by the Developer to the Unit Owners pursuant to the Act and Section 4.16 hereof, the Developer may vote to waive reserves for the first two (2) years of operation of the Association.

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



- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to the Unit Owners.
- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each Unit Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than a majority vote of all the Units (including Units owned by the Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.
- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation Assessments for improvements to the Condominium Property.
- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of a majority of Unit Owners other than the Developer.
- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 9.1(a) above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special

meetings in said subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

- 9.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceeding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the Amount of the last prior Assessments, and monthly (or quarterly) installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 9.1 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended Assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.
- 9.3 Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be due only after ten (10) days' notice is given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments.
- 9.4 Late Assessments. Assessments not paid within ten (10) days from the date due may bear interest from the date when due until paid at the then highest rate allowed by law. Additionally, the failure to pay any assessment within ten (10) days from the date due shall entitle the Association to levy a late charge against the defaulting Unit Owner, in such amount as the Board may determine from time to time in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late.
- 9.5 Depository. The depository of the Association shall be such bank or banks in the State as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited in the Association's name. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. Reserve funds shall be maintained in a separate account in the Association's name from operating funds.
- 9.6 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may

accelerate Assessments due for the remainder of the budget year upon filing a claim of lien therefore. The then unpaid balance of the Assessments for the balance of the accelerated period shall be due upon the date the claim of lien is filed.

- 9.7 **Enforcement of Assessments.** In the event an Assessment is not paid within ten (10) days of the date same shall be due and payable, the Association, through the Board of Directors, may proceed to enforce and collect said Assessments from the delinquent Unit Owner in any manner provided for by the Act, the Declaration and these By-Laws. Each Unit Owner shall be individually responsible for the payment of Assessments against his Unit and for the payment of reasonable attorneys' fees and costs incurred by the Association in the collection of sums due and enforcement of any lien held by the Association in accordance with the Act.
- 9.8 **Fidelity Bonds.** Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the board but not less than as required by 718.112(2)(j), Florida Statutes. The premiums on such bonds shall be paid by the Association as a Common Expense.
- 9.9 **Accounting Records and Reports.** The Association shall maintain accounting records in the State, according to the accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

No later than April 1, of the year following the end of a fiscal year, the Board shall mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months (i.e., the last completed fiscal year). The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- a. Cost for security;
- b. Professional and management fees and expenses;
- c. Taxes;
- d. Cost for recreation facilities;
- e. Expenses for refuse collection and utility services;

- f. Expense for lawn care;
- g. Cost for building maintenance and repair;
- h. Insurance costs;
- i. Administrative and salary expenses; and
- j. General reserves, maintenance reserves and depreciation reserves.

9.10 **Application of Payment.** All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.

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

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

11. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

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

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

12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

- (a) by not less than a majority of the votes of those members of the Association who are present or represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or

- (b) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or
- (c) by not less than 100% of the entire Board of Directors.

However, under no circumstances may amendments be made to any condominium documents regarding change in the occupancy and use restrictions, unless and until the property's zoning is changed to allow for residential use of the property.

- 12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance except as required by the Act. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.
- 12.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
13. Rules and Regulations. Attached hereto as Schedule A and made a part hereof are initial Rules and Regulations concerning the use of portions of the condominium. The Board of Directors may, from time to time, modify, amend or add to such Rules and Regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional Rules and Regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.
14. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
15. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

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

- (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;
- (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;
- (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
- (d) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- (e) A copy of the current Rules and Regulations of the Association;
- (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than seven (7) years.
- (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers;
- (h) All current insurance policies of the Association and the Condominium;
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- (j) Bills of sale or transfer for all property owned by the Association;
- (k) Accounting records for the Association and the accounting records for the Condominium, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not be limited to:
  - (1) Accurate, itemized, and detailed records for all receipts and expenditures.
  - (2) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
  - (3) All audits, review, accounting statements, and financial reports of the Association or Condominium.

- (4) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year;
- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections, which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates.
- (m) All rental records where the Association is acting as agent for the rental of Units.
- (n) A copy of the current question and answer sheet as described by Section 718.504 of the Act.
- (o) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall be maintained in the County or at such other place as may be permitted by the Act (as it may be amended from time to time).

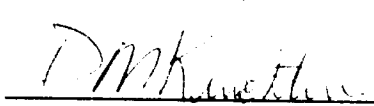
The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member.

17. Arbitration. Any disputes as defined under Section 718.1255 of the Act shall be resolved through non-binding arbitration conducted in accordance with said Section 718.1255 of the Act.

The foregoing was adopted as the By-Laws of Olde Marco Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, on the 13 day of 11/13 2003

Approved:

  
K. Patrick Kruchten, President

  
Demian M. Kruchten, Secretary

**OLDE MARCO, A CONDOMINIUM****ESCROW AGREEMENT**

THIS ESCROW AGREEMENT dated the day and year below written, by and between LAW OFFICE OF DEMIAN M. KRUCHTEN, LLC, a Florida limited liability company, hereinafter called "Escrow Agent"; and MARCO CAT, LLP a Minnesota limited liability partnership hereinafter called "Developer"

**WITNESSETH**

Whereas, Developer proposes to construct and sell a condominium at Marco Inland, Florida, to be known as Olde Marco, A CONDOMINIUM, and,

Whereas, Developer will deliver monies mad sales deposits from Buyers to Developer into an escrow account prior to closing, and

Whereas, Escrow Agent is willing to act as Escrow Agent and Developer desires it to do so,

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable considerations by each of the parties paid and received, they do hereby agree that all payments received by Developer towards the sale price of the condominium unit contracted to be purchased by a Buyer shall be held by Escrow Agent on the following terms mad conditions:

1. Escrowed funds may be deposited in separate accounts, or in common escrow or trust accounts, or commingled with other escrow or trust accounts, handled or received by the Escrow Agent.

2. The Escrow Agent may invest the escrow funds only in securities of the United States or an agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

3. Funds shall be released from the escrow as follows:

(a) If a buyer properly terminates a contract pursuant to its terms or pursuant to applicable Florida States, the funds shall be paid to the Buyer together with any interest earned.

(b) If the Buyer defaults in the performance of his obligations under the contract to purchase and sell, the funds shall be paid to the Developer together with any interest earned.



(c) If the funds of the Buyer have not been previously disbursed in accordance with the provisions of this Section, they will be disbursed to the Developer by the Escrow Agent at the closing of the transaction unless prior to the disbursement the Escrow Agent has received from the Buyer written notice of a dispute between the Buyer and Developer, in which case the Escrow Agent shall continue to hold the funds until the dispute has been resolved by agreement of the parties or until it receives the



order of the court with jurisdiction as to the disposition of such monies. Unless provided otherwise in the contract, any interest earned on the escrowed funds shall be paid to the Buyer at the closing of the transaction.

(d) Any monies received on anyone purchase contract in excess of 10% of the purchase price may be utilized by the Developer in actual construction of the construction or the condominium and will be released to the Developer upon its written request received from time to time.

4, Upon receiving the deposit, Escrow Agent agrees to send or give the unit Buyer a written receipt for the deposit at the address shown on the purchase contract, upon request.

5. (a) It is agreed that the Escrow Agents duties are only as set forth above, being purely ministerial in nature, and that Escrow Agent shall incur no liability except for willful misconduct or gross negligence.

(b) Escrow Agent shall be under no responsibility with respect to any of the deposited with Escrow Agent other than faithfully to follow the escrow instructions set forth in this Agreement. Escrow Agent may consult with counsel and shall be fully protected in any action taken in good faith in accordance with advice of such counsel. Subject to (a) Paragraph 5, Escrow Agent shall be indemnified by the Developer against the cost and expense Escrow Agent incurs by virtue of any legal proceedings that shall be instituted against Escrow Agent with respect to the subject matter of this Escrow Agreement. Escrow Agent shall not be required to institute legal proceedings of any kind except as set forth in these escrow instructions. Escrow Agent shall have no responsibility for the genuiness or validity of any documents or any item deposited with Escrow Agent, and shall be fully protected in acting in accordance with any written instructions given to Escrow Agent Escrow Agent hereunder and believed by Escrow Agent to have been signed by the proper parties.

6. The Developer reserves the right to amend these escrow instructions from time to time, to reflect administrative and judicial interpretations of the State of Florida, as Developer deems necessary.

DATE: May 13, 2003

MARCO CAT, LLP a Minnesota limited liability partnership.

BY: [Signature]

DATE: May 13, 2003

LAW OFFICE OF DEMIAN M. KRUCHTEN,  
LLP

BY: DM Kruchten



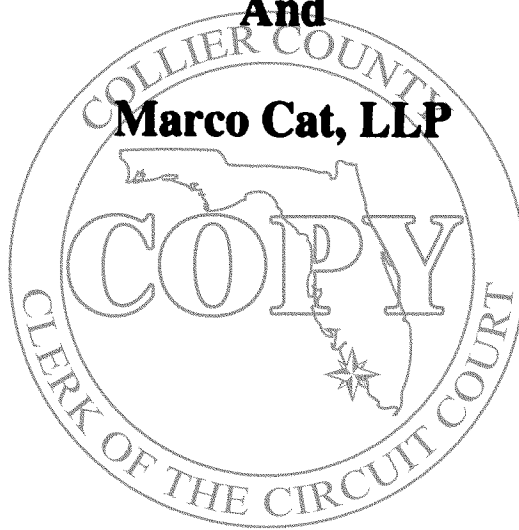
**Management Agreement**

**Between**

**Olde Marco Condominium Association, Inc.**

**And**

**Marco Cat, LLP**



INDEX

ARTICLE	TITLE
I.	CONTRACT DOCUMENTS
II.	MANAGEMENT DUTIES
III.	LIAISON WITH THE BOARD
IV.	COMPENSATION
V.	COMMENCEMENT & EXPIRATION
VI.	NON-COMPETITION AND CONFIDENTIALITY
VII.	MISCELLANEOUS SCHEDULES
	1. GENERAL CONDITIONS
	2. ITEMIZED CHARGES FOR SERVICE

REFERENCES INCORPORATED INTO AGREEMENT

Governing Documents (as provided to Management).

Resolutions of the Board (provided same are delivered to Management).

## AGREEMENT

THIS AGREEMENT is made and entered into this 13 day of July 2003, by and between Olde Marco Condominium Association, Inc. ("Association") located in Marco Island, Florida and Marco Cat, LLP ("Management") located in Marco Island, Florida and incorporated in Minnesota.

### WITNESSETH:

In consideration of the mutual terms, covenants and conditions set forth herein below, the Association hereby appoints Marco Cat, LLP as Management for certain and specific duties included herein, and Management hereby accepts that appointment in mutual agreement as to all that follows:

### ARTICLE I - CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and Schedules thereto, the Governing Documents and Board Resolutions (to the extent same are provided to Management) including all properly executed modifications, amendments, and changes issued subsequent to the execution of the Agreement, provided same are supplied to Management, and further provided that changes in any such documents subsequent to the date hereof (other than expansion amendments) shall have the written concurrence of Management to the degree that such changes alter its responsibilities or rights under the Agreement. In order to facilitate knowledgeable and efficient operation, the Association shall furnish Management with a complete set of plans and specifications for the Property and its improvements, to the extent such are reasonably available.

### ARTICLE II - MANAGEMENT DUTIES

It shall be the duty of Management during the period of this Agreement to provide counseling and advice to the Association and the Board of Directors, and its committees in accordance with generally accepted industry standards in the area of community association management. Management shall undertake reasonable efforts to implement the decisions of the Board of Directors, subject to the compensation schedule and the limitations contained in this Management Agreement. It shall be the duty of Management, during the term of this Agreement, to operate and maintain the property according to prevailing community association industry standards consistent with the overall plan of this association.

All Management's employees who handle or are responsible for handling of the Association's monies shall be bonded or similarly covered under Management's insurance coverage.

Management shall conduct its duties consistent with the provisions and intents of Federal, State, and local laws and regulations as they pertain to the operation of the Association.

**ARTICLE III - LIAISON WITH THE BOARD**

It shall be the duty of the Board of Directors of the Association to appoint one member of such Board of Directors as liaison with Management. Management shall be advised of the identity of such liaison officer, and to the extent possible and practicable, all communications with Management shall be made by or delivered to such liaison officer.

Notwithstanding the appointment of one or more liaisons, Management shall communicate with Directors, Officers, and Committee Chairmen in the exercise of their mutual and respective responsibilities.

Management will designate one individual to serve as the Property Manager for the Association and will provide all reasonable resources to insure a harmonious relationship between the Association and the Assigned Property Manager. Management further agrees to consider all reasonable requests by the Association for reassignment of any Property Manager and will cooperate with the Association to resolve, to the extent possible, all conflicts prior to removal of any Property Manager.

**ARTICLE IV - COMPENSATION**

The compensation to which Management shall be entitled during the term of this Agreement shall consist of fees for regular monthly management services, paid monthly in advance; fees for other services, paid on an itemized basis to be negotiated prior to performance, except in the event of emergencies or prior "blanket" authority granted by the Board.

**ROUTINE MANAGEMENT SERVICES**

Management shall be compensated according to the following schedule, the current fees being due and payable in advance from the current assessments collected each month. Such compensation includes the overhead expenses of Management, including salaries of Management's employees, general and administrative expenses of officers and employees incurred under this Agreement, and covers fees for basic services, including financial management, general administration and physical systems management.

**YEAR ONE - \$40.00 per month per unit.**

**ADDITIONAL SERVICES (see SCHEDULE "B")**

With the approval of the Board of Directors, Management shall perform certain periodic, routine services relating to mailings, photocopying, sending of registered notices to Owners in breach of the Governing Documents and other items according to the fees set forth in Schedule B to this Agreement.

### NON-ROUTINE SERVICES

Management shall maintain an availability for services related to certain non-routine activities for which the need may or may not arise. Non-routine services shall be performed with the authorization of the Board of Directors or an officer designated by the Board of Directors. Non-routine services may include, without limitation, the following:

- a. Research, court appearances, depositions, after hours meetings, and consultations with attorneys or other experts related to the Association's role as plaintiff, defendant, co-defendant or witness in any action or potential action, excluding assessment collection activity prior to a court appearance.
- b. Negotiations and claims of a protracted nature arising from warranty claims for work performed by any contractor prior to the effective date of Management's first Agreement for Management services with the Association.
- c. Insurance claim administration in cases involving property damage and personal injury items covered under the Association's Comprehensive Multi-Peril Policy in cases where Management is required to spend more than eight (8) hours per case. Such charges by Management under this provision shall be considered a normal expense item in filing a claim and administering the application for insurance proceeds and shall, accordingly, be submitted with the claim. To the extent not covered by insurance, such charges shall be an expense of the Association.
- d. Extraordinary or other non-routine requests outside the scope of the general contractual relationship as established by this Agreement. Such extraordinary requests may include, without limitation, such items as special mailings, newsletter production and mailing, distribution of notices, governmental or other research, attendance at special hearings, and extraordinary contract administration, among others.

Charges for services performed under this Section shall be (i) at rates mutually agreed upon by Management and the Association at the time work is authorized, or (ii) at hourly rates stipulated in Schedule B, unless otherwise determined. The above list is not exhaustive.

## **ARTICLE V - COMMENCEMENT AND EXPIRATION**

### COMMENCEMENT AND TERM

This Agreement shall commence on \_\_\_\_\_ day of May, 2003, and expire \_\_\_\_\_ day of May, 2004, ("initial term"). The term of the Agreement is subject to termination as set forth below in this Agreement. Unless either party acts to the contrary, this Agreement will automatically renew under the same terms and conditions, and shall continue to automatically renew for additional one (1) year periods until such time as either party terminates this Agreement, as set forth in the following paragraph.



**TERMINATION**

This Agreement may be terminated, for any reason, by either party upon not less than sixty (60) days written notice. All terminations shall be effective at the end of a calendar month. Notice shall be sent by certified mail, return receipt requested or hand-delivered.

**ARTICLE VI – NON-COMPETITION & CONFIDENTIALITY**

It is recognized and understood by the parties hereto that the Association and its Board of Directors through their association with Management as an employer of Management's services pursuant to this Agreement, shall have access to and will acquire a considerable amount of knowledge and goodwill with respect to the business of Management, specifically including this contract document, which knowledge and goodwill are extremely valuable to Management. All parties to this Agreement acknowledge that disclosure of any of this confidential business information, which shall include, by reference, this contract document, or competition by any of the parties either prior to or subsequent to termination of this Agreement would be extremely detrimental to Management.

The Association and each member of its Board of Directors covenants and agrees that for a period commencing as of the date hereof and terminating one (1) year after termination of this Agreement, the Association and such Board members shall not, in any capacity whatsoever hire or engage or attempt to hire or engage any individual who is an employee of Management at any time during the one (1) year period prior to the date such employee's employment with Management is terminated and within one (1) year after such date.

**ARTICLE VII – MISCELLANEOUS****DEFINITIONS**

- a. Terms used in this Agreement shall be defined in the same manner as in state statutes governing the Association, or if not defined therein, as defined in the Governing Documents, or if not defined therein, as defined herein.
- b. "Governing Documents" shall mean and refer to the Declaration for the Association, including the By-Laws, policy statements and rules and regulations adopted by the Association or its Board of Directors, collectively.
- c. "Property" shall mean and refer to the General and Limited Common Elements as defined in the Governing Documents, and does not include individual units.

**CONFLICTS**

If any conflict shall arise within the Contract Documents and this Agreement, the Governing Documents shall control this Agreement.

**NOTICES**

All notices regarding termination pursuant to the provisions of Article V shall be in writing and mailed by Certified Mail, Return Receipt Requested, or by receipted hand delivery to:

ASSOCIATION – Attn: President or Board of Directors of Olde Marco Condominium Association, Inc., at the business address listed in the Governing Documents for the Association.

MANAGEMENT – Attn: K Patrick Knechten

Notices shall be effective upon receipted hand-delivery or three days after the postmark date, except for notice of change of address which shall be effective upon receipt. Other notices may be by first class mail or hand-delivery.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

FOR THE BOARD OF DIRECTORS:

K Kula  
President

5-13-03  
Date

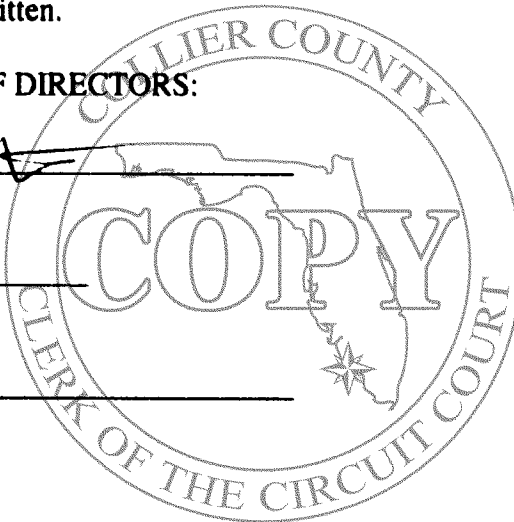
MAE dora  
Witness

5-13-03  
Date

FOR OLDE MARCO CONDOMINIUM ASSOCIATION, INC.:

K Kula  
President

5-13-03  
Date



M. A. Eicher

Witness

5-13-03

Date

FOR MARCO CAT, LLP

K. Kumar

By:

5-13-03

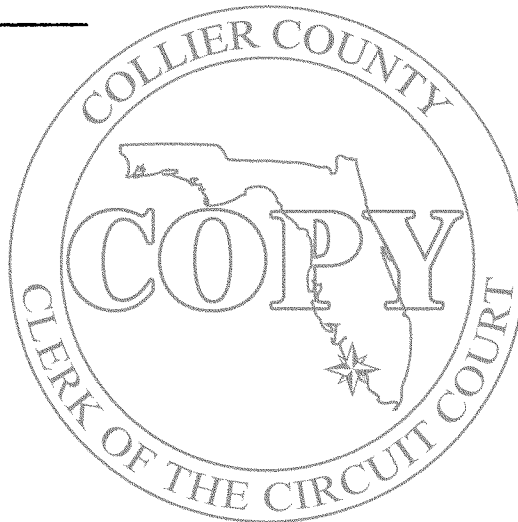
Date

M. A. Eicher

Witness

5-13-07

Date



SCHEDULE A  
GENERAL CONDITIONS

SCHEDULE A

INDEX

<b>ARTICLE I</b>	<b>GENERAL</b>
A-1.01	Status of Management
A-1.02	Liability of Management
A-1.03	Role of Management
<b>ARTICLE II</b>	<b>FINANCIAL MANAGEMENT</b>
A-2.01	Collections
A-2.02	Deposits
A-2.03	Disbursements
A-2.04	Financial Reports
A-2.05	Investments
A-2.06	Annual Budget and Variances
A-2.07	Budget Preparation
A-2.08	Conformance
<b>ARTICLE III</b>	<b>GENERAL ADMINISTRATION</b>
A-3.01	Inventory System
A-3.02	Files and Roster
A-3.03	Correspondence
A-3.04	Administration of Rules
A-3.05	Meeting Attendance
A-3.06	Expenditure Commitment Limits
A-3.07	General Information Report to Board
A-3.08	Operating Procedures
A-3.09	Insurance Administration
A-3.10	Owner Communication and Participation
A-3.11	Required Filings and Reports by Management
A-3.12	Meetings Administration
A-3.13	Monthly General Status Report
<b>ARTICLE IV</b>	<b>PHYSICAL SYSTEMS MANAGEMENT</b>
A-4.01	Contract Supplies and Services Procurement
A-4.02	Supervision
A-4.03	Preventive Maintenance Program
A-4.04	Building Care

A-4.05	Grounds Care
A-4.06	Capital Improvements
A-4.07	Emergency Services Program
A-4.08	Service Requests
A-4.09	Jurisdictional Requirements

**ARTICLE V                      BOOKS, RECORDS, INSPECTION AND ANNUAL AUDIT**

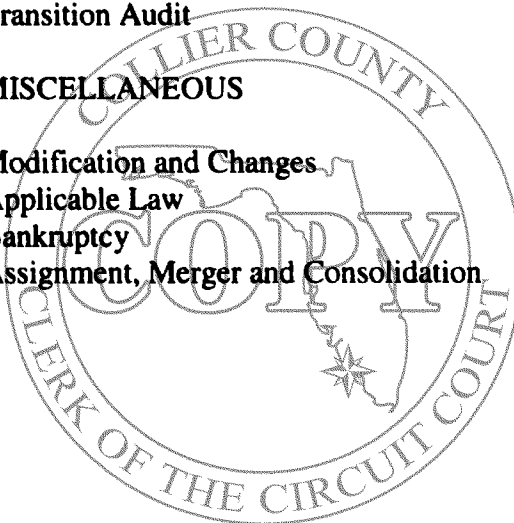
A-5.01	Books and Records
A-5.02	Inspection
A-5.03	Annual Audit

**ARTICLE VI                      TERMINATION AND RENEWAL**

A-6.01	Work Status
A-6.02	Turnover of Records
A-6.03	Termination Activities
A-6.04	Transition Audit

**ARTICLE VII                      MISCELLANEOUS**

A-7.01	Modification and Changes
A-7.02	Applicable Law
A-7.03	Bankruptcy
A-7.04	Assignment, Merger and Consolidation



**ARTICLE I – GENERAL****A-1.01 STATUS OF MANAGEMENT**

Marco Cat, LLP shall be considered a management contractor of the Association. All legally binding instruments, specifically including, but not limited to contracts, shall be executed by the President or Vice President of the Association unless there is an emergency.

**A-1.02 LIABILITY OF MANAGEMENT**

If Management shall have maintained in full force and effect all insurance and bonds required by this Agreement, the Association shall, upon demand, reimburse and hold harmless Management for any and all sums paid out by Management to defend, compromise or settle any claim or any action, suit or proceeding brought against Management, including any injury suffered by an employee or other persons, which results from actions by Management lawfully taken pursuant to any provisions of this Agreement, provided that nothing herein shall obligate the Association to any liability for any malicious or illegal conduct, or for the gross negligence of Management; and provided, further, prompt notice of any claim, for which such reimbursement is asserted by Management, shall be given to the Association and an opportunity afforded to the Association to assume the defense thereof.

Management shall maintain in force, for the entire term of the Agreement, liability and business insurance, in the minimum amount of \$1,000,000.00.

**A-1.03 ROLE OF MANAGEMENT**

Management fully accepts that its function is to assist the Board of Directors in the operation and administration of the Association. Notwithstanding the express authority given to Management in this Agreement, it is understood and agreed that Management shall at all times confer fully and freely with the Board of Directors in the performance of the services set forth hereinafter, including but not limited to, attendance at regular Board meetings.

**ARTICLE II – FINANCIAL MANAGEMENT****COLLECTION, DEPOSITS, ACCOUNTING**

Management shall assist and/or advise the Board in all matters relating to income of any source and expenditures of any nature including, but not limited to, the following duties:

**A-2.01 COLLECTION**

Management shall collect all general and special assessments as they become due and payable from all Owners as identified on the rolls initially provided Management by the Association, and as such are changed from time to time by notification to Management of changes in individual ownership, and all monies due from any source which are obligated to or for the benefit of the Association. The Board hereby authorizes Management, as its Agent, to request, demand, collect, receive, and receipt for any and all charges, assessments, or rents due the Association which may at any time become due by way of legal process or otherwise as may be required for the collection of delinquent assessments from the Owners. Except as indicated in Schedule B, and further, except for payment coupons, invoices, or other notifications, legal fees, lien filings and releases and court actions relating to delinquent assessments, costs of delinquent account processing shall be an expense of Management.

The Association agrees to designate an attorney, with whom Management agrees to provide full cooperation, for collection activities related to accounts past due, or in lieu thereof, to accept Management's designation of an attorney for collections. Attorneys' fees and related expenses shall be an expense of the Association notwithstanding Association's right to recover some or all of those expenses pursuant to the Governing Documents and/or properly adopted Board Resolutions.

As a standard practice, Management shall send to the Board of Directors an itemized list of all delinquent accounts as part of the regular status report.

#### A-2.02 DEPOSITS

Management shall initially deposit all receipts from whatever source, including assessments, in a financial institution or institutions insured by the Federal Government, in an account or accounts in the name of the Association and not commingled with funds of any other party, established and maintained in a manner to indicate the custodial nature thereof.

#### A-2.03 DISBURSEMENTS

From the funds collected and deposited in the Association account(s) Management shall cause to be disbursed regularly and punctually: (1) salaries and any other compensation due and payable to the employees or to independent contractors hired pursuant to the authority herein contained; (2) any taxes payable; (3) fire and other insurance premiums; (4) the amounts specified in the approved operating budget for allocation to any reserve fund for replacements or to any other reserve accounts; (5) sums otherwise due and payable as operating expenses in the approved operating budget or authorized to be incurred under the terms of this Agreement or otherwise, including Management's compensation.

#### A-2.04 FINANCIAL REPORTS

Management shall maintain a record of all income and expenses, assets, and liabilities, utilizing the accrual method of accounting, with a quarterly statement of the aforementioned items, including a balance sheet and a profit and loss statement reflecting actual versus budget activity for the most recent month and on a cumulative basis from the commencement of the fiscal year until the date of the report to the Board.

#### A-2.05 INVESTMENTS

As directed by the Association, Management will cause to be purchased from time to time negotiable instruments, Certificate of Deposits, Treasury Bills and other such investments. Any investment service fee will be the expense of the Association.

#### A-2.06 ANNUAL BUDGET AND VARIANCES

The current fiscal year operating budget adopted by the Board shall serve as the supporting document for the schedule of assessments of the Owners for the fiscal year. The Budget shall constitute the major financial control under which Management shall operate, and there shall be no substantial deviations therefrom, excluding such expenses as utilities, fuel, license fees, insurance and other expenses not within the control of Management, except as may be approved by the Board of Directors.

#### A-2.07 BUDGET PREPATION

Management shall assist the Board of Directors and Treasurer in the preparation of the operating and capital budgets of the Association, including, but not limited to, the following:

- a. At least ninety (90) days before the end of the fiscal year, or as otherwise required by the Governing Documents, Management shall submit to the Board a baseline budget for the ensuing fiscal year. This proposed budget shall include an analysis of repair and maintenance needs, operating expenses, and any capital improvements anticipated for that period. Reserve fund recommendations shall also be included on an updated cost basis. Management shall prepare one baseline budget (including narrative) and one final fiscal year operating budget as well as any revisions initiated internally, at no additional charge.

#### A-2.08 CONFORMANCE

Management shall administer the Association's financial affairs in accordance with the provisions of policies adopted by the Board of Directors.

### **ARTICLE III – GENERAL ADMINISTRATION**



Management shall assist the Board of Directors in all matters of administration, including, but not limited to, the following:

#### A-3.01 INVENTORY SYSTEM

To the extent that the Association has goods and property of significant volume or value, develop and maintain a personal and business property inventory of major items.

#### A-3.02 FILES AND ROSTERS

Maintain a record file containing papers relative to administration and ownership and update the file as circumstances warrant. Such file shall include a roster of absentee owners and other data necessary to properly administer the Association's affairs, to the extent such data have been provided Management by the Association, closing attorneys, mortgagees and others. Should individual owners not willingly cooperate with the Association or Management in providing information necessary to maintaining up-to-date records, any research cost necessary to accomplish same shall be an additional Association expense in accordance with the hourly charges defined in Schedule B, with consent of the Board of Directors, for such activities.

#### A-3.03 CORRESPONDENCE

Advise the Board as to, or initiate with the consent of the Board, general correspondence dealing with business matters of the Association between governmental officials, independent contractors, Owners, tenants, and other entities with which the Association or its representatives have a business relationship, and maintain a file thereof.

#### A-3.04 ADMINISTRATION OF RULES

Assist the Board of Directors in the administration of provisions of the Governing Documents. Also, assist the Board in drafting resolutions, and rules and regulations. Management, in accordance with Board adopted policies, shall take such actions to cause cures to such violations as are consistent with Board policy.

#### A-3.05 MEETING ATTENDANCE

Management shall consider the fee provided for in Section 4.01 of the Agreement to include compensation for attendance by Management's designated Manager at meetings of the Board of Directors of the Association up to 6 times annually, at committee meetings, if requested, up to 6 times annually, and at 1 membership meeting annually.

At the request of the Association, Management shall attend more frequent meetings for additional compensation at hourly rates stipulated in Schedule B for each hour of time portal to portal expended by Management in connection with such additional meetings. There shall be no limitation place on meeting time between the President of the Board of Treasure and the professional level representatives of Management who have been

assigned responsibilities on behalf of the Association, provided that such meetings are held on a scheduled appointment basis at Management's offices, or other designated site, during business hours.

#### A-3.06 EXPENDITURE COMMITMENT LIMITS

Except for disbursements authorized in Section 2.03 above, for any one item of repair or replacement, the expenses incurred shall not exceed the sum of \$500.00 unless specifically authorized by the Board of Directors provided, however, that emergency repairs involving manifest danger to life or property, or immediately necessary for the preservation and safety of the Property or for the safety of owners, or required to avoid the suspension of any necessary services to the Association, may be made by Management irrespective of the cost limitation imposed in this Paragraph. Notwithstanding this authority as to emergency repairs, it is understood and agreed that Management confer immediately with the Board of Directors regarding every such expenditure.

#### A-3.07 GENERAL INFORMATION REPORT TO THE BOARD

Management shall inform the Board, on a periodic basis, of industry information and practices pertaining to associations which come to Management's attention as a normal course of business.

#### A-3.08 OPERATING PROCEDURES

Management shall provide the Board from time to time with recommended standard procedures, specifications and policies for procurement and operations and other items relating to the operation of Association affairs.

#### A-3.09 INSURANCE ADMINISTRATION

Management shall assist the Board and its qualified insurance broker or contractor in meeting the Board's obligation to cause to be placed in effect all forms of insurance required by the Governing Document, and as dictated by prudent business practice. Management shall also diligently process all claims for which the Association is responsible.

Management shall provide the Board with comprehensive and timely reports on all accidents, fires and any and all claims relating to Management, maintenance and operation of the Property. Should Management expend more than eight (8) hours per claim, Management may be reimbursed at rates specified in Schedule B.

#### A-3.10 OWNER COMMUNICATION AND PARTICIPATION

Management shall assist the Board in the development of good communication with Owners and other residences of the units. Management shall cause all notices required

by that law and the Governing Documents or as directed by the Board to be sent to the appropriate or designated recipients, according to the fee schedule in Schedule B to the Agreement.

#### A-3.11 REQUIRED FILINGS AND REPORTS BY MANAGEMENT

Management shall prepare for execution and filing by the Association:

- a. All forms, reports, and returns required by law in connection with unemployment insurance, disability benefits, social security and other similar taxes now in effect or hereafter imposed, if any (but specifically excluding any income tax returns).
- b. Resale certificates as may be required by the applicable law within the time period required by law following receipt of a written request together with the required fee for such from the selling owner.

#### A-3.12 MEETINGS ADMINISTRATION

Management shall assist in the organization of all general membership meetings and in particular the Annual Meeting of the Association, including preparation of reports and notices, and procedures, securing necessary personnel, and providing technical supervision and support for meetings at which the general membership is to vote.

#### A-3.13 MONTHLY GENERAL STATUS REPORT

Management shall prepare a written monthly status report and agenda to be presented no less than 48 hours prior to the regular meeting of the Board of Directors. The written report, at a minimum, shall normally contain the following information:

- a. Status of Maintenance Contracts: site inspection reports, progress of subcontractor and/or employee repair and maintenance work, emerging problems with grounds and building, and recommendations for future action.
- b. Status of Finances: balance sheet, income statement, general ledger entries, delinquent account status, budget deviations, and such other items necessary to prudent business interpretation and administration of the Association's financial affairs.
- c. Status of Administration: significant violations of the Governing Documents and actions involving security, vandalism, insurance claims and other matters not falling within the categories of maintenance and finance.

### **ARTICLE IV – PHYSICAL SYSTEMS MANAGEMENT**

Management shall assist and/or advise the Board and /or employees and contractors of the Association in all matters related to the maintenance of the Property, specifically:

Cause the Property to be maintained, including routine maintenance, according to the standards established by state and/or local law, the Governing Documents, and the Board of Directors. The standards and actions related thereto shall include the following:

- a. Except as approved by the Board or permitted herein, contractors shall be solicited pursuant to competitive bidding procedures and written specifications. Management shall submit recommendations to the Board containing evaluation of the bids and their adherence to the specifications, information on past experience and such other information as may be helpful to the Board in making a final selection.
- b. After selection, Management shall oversee the activities of all contractors. Management shall assist the Board in the enforcement of contractor warranties. Management also shall fully cooperate with consultants that may be retained by the Board to accomplish specialized functions for the Association in the areas of law, public accounting, or other areas when the activities of such specialists relate directly to routine operations. Specialized activities (e.g., reconstruction, new construction or major renovation), may entail additional fees based upon prior negotiation with the Association.

#### A-4.01 CONTRACT SUPPLIES AND SERVICES PROCURMENT

Management shall develop and maintain comprehensive procurement procedures in matters of a routine recurring nature. Such matters may include, as applicable, routine cleaning, painting, decorating, plumbing, electrical repair, carpentry, plastering and other such normal maintenance and repair work as may be necessary, subject to any limitations imposed by the Board. Specifications for major capital repairs and replacements, capital improvements or other work requiring certification by licensed professions shall be developed at the expense of the Association. The exercise of any obligations and authority under the provisions of this Paragraph shall be in the name of the Association which shall be the sole beneficiary of any discounts, commissions, or rebates obtainable as a result of any such purchases.

#### A-4.02 SUPERVISION

Management shall supervise the operations of all routine operations of contractors who perform work for the Association. Supervision of contractors performing unscheduled major work such as required due to fire or other calamities, or capital improvements may be subject to additional charges by Management.

#### A-4.03 PREVENTIVE MAINTENANCE PROGRAM

Management shall establish and implement a preventive maintenance program for all major physical systems, with this program to be developed and maintained on a regular basis reflecting useful life cycles of common components and/or equipment.

**A-4.04 BUILDING CARE**

Management shall ensure the cleanliness and working conditions of all common areas and equipment including, as applicable, central systems, light fixtures, fire extinguishers, entry doors, common facilities and areas, etc.... Major deficiencies noted shall be reported in writing to the Board of Directors.

**A-4.05 GROUNDS CARE**

Management shall inspect all ground areas to determine whether such are receiving adequate care and maintenance and take such measures as necessary to ensure same.

**A-4.06 CAPITAL IMPROVEMENTS**

Management shall make recommendations for capital improvements and any other recommendations as may be appropriate for the improvement of the Property.

**A-4.07 EMERGENCY SERVICE PROGRAMS**

Management shall maintain a 24-hour, seven-days-a-week emergency system for communication with Owners. The emergency support system shall include the retention of qualified and/or licensed personnel or firms in all trades deemed necessary to respond to emergencies.

**A-4.08 SERVICE REQUESTS**

Regardless of the nature of the request, Management shall administer a program to record and process, as appropriate, reasonable information and service requests from all owners and residents. Management shall provide instruction to owners and residents outlining service request procedures.

**A-4.09 JURISDICTIONAL REQUIRMENTS**

Management shall take action as may be necessary to comply promptly with any and all orders or requirements affecting the premises placed thereon by any Federal, state, county or municipal authority having jurisdiction thereover, and orders of the Board of Fire Underwriters or similar bodies, subject to the same limitations contained in Paragraph A-3.06. Management shall not be obligated to take any action under the provisions of this Paragraph in any event for which Board approval has been requested and not provided, nor whenever the Association is contesting or affirmed its intent to contest any jurisdictional order or requirement. In the event Management is so relieved of its obligations, the Association shall hold Management harmless from and indemnify Management against any and all consequences of such failure to comply.

**ARTICLE V – BOOKS, RECORDS, INSPECTION AND ANNUAL AUDIT**

**A-5.01 BOOKS AND RECORDS**

Management shall maintain a comprehensive system of office records, books, and accounts reflecting the activities of operation as set forth in this Agreement.

Copies (which may be duplicated) of contracts, filings with public agencies and financial books and accounts may be maintained at the principal office of the Board. Originals of all records will be maintained by Management.

**A-5.02 INSPECTION**

All office records, books, and accounts maintained either at the Association's offices or in Management's offices except as otherwise directed by the Board or in accordance with law, shall be made available for inspection by any and all Owners or their authorized representatives, upon reasonable notice, during normal business hours.

**A-5.03 ANNUAL AUDIT**

Management shall cooperate fully with the independent certified public accountant in the conduct of the annual audit including making all records, books, and accounts available for their inspection and review, and shall do such at no additional expense to the Association provided the audit is completed within ninety (90) days following the close of the fiscal year being audited.

**ARTICLE VI - TERMINATION AND RENEWAL****A-6.01 WORK STATUS**

After receipt of a Notice of Termination, or sixty (60) days prior to the expiration of the Agreement should either party elect not to seek renewal of the Agreement, Management will:

- a. Stop such work under the contract on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders with subcontractors for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- c. Terminate all orders and subcontractors to the extent that they related to the performance of work terminated by the Notice of Termination;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Board of Directors, to the extent it may be required, which approval or ratification shall be final for all purposes of this clause;
- e. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

**A-6.02 TURNOVER OF RECORDS**

- a. Within four (4) weeks of the Notice of Termination, or four (4) weeks prior to expiration of the Agreement if either party elects not to renew, Management shall gather all files in boxes and index the contents. All files, financial data and other material collected or created for the Association by Management shall remain property of the Association. Upon turnover of those records, the Association's representative shall execute a receipt for same, with a copy provided to Management. Management shall not be deemed responsible for maintaining Association files or records not claimed or received by the Association after 30 days from the last day of the contract period.
- b. Management is entitled to retain copies at its cost of such documentation as may be material in any future claim regarding Management's performance during the contract period under its responsibility.
- c. A date and time shall be set for a meeting to take place in Management's principal office, or elsewhere as agreed, within fourteen (14) days of the term of the Agreement for the purposes of turning over to the Association all requested records, and to execute any agreements and releases relating to the conclusion of contractual obligations.

**A-6.03 TERMINATION OF ACTIVITIES**

- a. Management shall notify vendors, services and banks of the change in management when informed of the new address for the Association. Notification shall generally be accomplished within four weeks of the Notice of Termination, provided Management has received the proper information.
- b. Management shall pay all invoices for which the Association is responsible which have been received by Management as of the date of the last routinely scheduled disbursement prior to the last day of the term of the Agreement, except for any invoices in dispute. Management may retain in the Association's name and account an amount equivalent to one month's income or \$5,000, whichever is greater, to settle outstanding Association liabilities. Management shall provide a full accounting for these funds and any disbursements made. Said retention will not be held for longer than 60 days from the last day of the term of the Agreement.
- c. Management shall forward to new management agent any payments received after termination within three (3) business days of receipt. This obligation shall cease after thirty (30) days of notice of termination of the Agreement.

On or before then last day of the term of the Agreement, unless otherwise mutually agreed, Management shall disburse a check or checks payable to the Association's

account or accounts, except for a sufficient amount to allow for clearing outstanding checks, as indicated in Paragraph (b) above.

#### A-6.04 TRANSITION AUDIT

The Association may at its own expense conduct an independent audit by a Certified Public Accountant to be commenced following the last day of the term of the Agreement. Management agrees to provide assistance to the auditor at no additional expense to the Association provided the audit is initiated within forty-five (45) business days of the last day of the term of the Agreement and concluded within fifteen (15) days thereafter. Thereafter, Management shall be entitled to compensation at the hourly rates stipulated in Schedule B for such time as the auditor requires of Management.

### **ARTICLE VII – MISCELLANEOUS**

#### A-7.01 MODIFICATION AND CHANGES

This writing is intended by the parties as a final expression of the Agreement and as a complete statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No variations, modifications, or changes of the Agreement shall be binding unless it is made in writing and executed by both parties.

#### A-7.02 APPLICABLE LAW

It is understood and agreed that this Agreement shall be construed in accordance with the laws of the State of Florida.

#### A-7.03 BANKRUPTCY

If Management shall be adjudicated as bankrupt or insolvent and such adjudication is not vacated within one hundred twenty (120) days; or if a receiver or trustee shall be appointed and it shall not be vacated within one hundred twenty (120) days; or if a corporate reorganization of Management or any arrangement by statute shall be filed; or if Management shall make an assignment for the benefit of creditors; then the same may be cause for termination of this Agreement.

#### A-7.04 ASSIGNMENT, MERGER AND CONSOLIDATION

No assignment, either in whole or in part, of this Agreement, or the continuation of this Agreement after a merger or consolidation with another entity, shall be valid without the prior written approval of the Board of Directors. Failure to secure prior written approval shall be just cause for termination of this Agreement.



# **Olde Marco, A Condominium Estimated Operating Budget**

<b>EXPENSE ITEM</b>	<b>Per Unit</b>	<b>Per Unit</b>	<b>Annual</b>
	<b>Monthly</b>	<b>Quarterly</b>	<b>Budget</b>
Association Management Fee	\$40.00	\$120.00	\$24,480.00
Grounds Maintenance	\$22.45	\$67.35	\$13,740.00
Insurance	\$57.45	\$172.35	\$35,160.00
Garbage Pickup	\$21.53	\$64.58	\$13,174
Pest Control	\$4.31	\$12.94	\$2,640.00
Water	\$44.53	\$133.58	\$27,250.00
Sewer	\$26.14	\$78.43	\$16,000.00
Building Supplies & Maintenance	\$14.71	\$44.12	\$9,000.00
Legal & Accounting	\$11.44	\$34.31	\$7,000.00
Property Taxes	\$42.16	\$126.47	\$25,800.00
Elevator Maintenance	\$7.25	\$21.76	\$4,440.00
<b>Subtotal Operating</b>	<b>\$291.97</b>	<b>\$875.89</b>	<b>\$178,684.00</b>
<b>Statutory Reserves</b>			
Roof	\$9.82	\$29.46	\$6,010.64
Re-painting	\$9.58	\$28.74	\$5,860.99
Paving/resurfacing	\$3.12	\$9.36	\$1,908.14
<b>Subtotal Reserves</b>	<b>\$22.52</b>	<b>\$67.56</b>	<b>\$13,779.77</b>
<b>GRAND TOTAL</b>	<b>\$314.49</b>	<b>\$943.45</b>	<b>\$192,463.77</b>

The specific calculations used to determine the per-unit reserve amounts in this budget, include assumptions of future value increase of 3% per year in costs and a 6% projected rate of interest on assessments pooled, and are as follows:

**Roof Replacement Reserve Calculation**

Estimated cost per unit to re-roof (1/51 each of 75% of roofs)	\$6,010.64
Divided by 25 years estimated life	25 years
Estimated cost per year	\$117.85
Division by 12 months	12 months
Estimated cost per unit/per month	\$9.82

**Building Re-Painting Reserve Calculation**

Estimated cost per unit to re-paint	\$5,860.99
Divided by 7 years estimated life	7 years
Estimated cost per year	\$114.92
Division by 12 months	12 months
Estimated cost per unit/per month	\$9.58

**Paving/Resurfacing Reserve Calculation**

Estimated cost per unit to resurface	\$1,908.14
Divided by 10 years estimated life	10 years
Estimated cost per year	\$37.41
Division by 12 months	12 months
Estimated cost per unit/per month	\$3.12

These reserves are mandated by statute unless waived.

If statutory reserves were not waived, the quarterly assessment for the common expenses for each unit would be as stated in the budget, plus reserves for pavement resurfacing, roof replacement and building repainting, for a total quarterly expense of \$943.45.

**MONTHLY, QUARTERLY AND ANNUAL MAINTENANCE EXPENSES OF UNIT OWNERS**

Unit No.	Common Expenses	Monthly	Quarterly	Annually
All	1.96%	\$314.48	\$943.45	\$3,773.80

**ASSESSMENTS ARE PAYABLE MONTHLY.** Refer to the Bylaws.

**THE AMOUNTS SET FORTH ABOVE WILL BE THE INITIAL ASSESSMENTS. THE DEVELOPER DOES NOT GUARANTEE THAT ASSESSMENTS WILL NOT EXCEED \$314.48 PER MONTH, OR \$943.45 PER QUARTER.**

Schedule A to By-Laws

## RULES AND REGULATIONS

## FOR

## OLDE MARCO CONDOMINIUM ASSOCIATION, INC.

The following Rules and Regulations supplement those contained in the Declaration of Condominium for Olde Marco, a Condominium. They are applicable to all occupants of Units as well as to Unit Owners.

1. The entranceways, passages, vestibules, elevators, lobbies, halls and similar portions of the Common Elements shall be used only for ingress and egress to and from the Condominium Property. No carts, bicycles, carriages, chairs, tables or other similar objects shall be stored in them.
2. Each Unit User's personal property must be stored within the Unit.
3. The Common Elements shall not be obstructed, littered, defaced, or misused in any manner.
4. No articles shall be placed in the hallways or breezeways.
5. No articles except suitable furniture, plants and planters shall be placed on balconies, terraces, courtyards or similar areas.
6. Neither rugs, laundry nor any other article(s) shall be shaken or hung from windows, doors, balconies, terraces or exterior walls.
7. Garbage and other refuse shall be placed only in designated areas.
8. Pets are absolutely not allowed in or about Condominium Property, including exclusion from individual Units.
9. Employees of the Association are not to be engaged by Unit Users for personal errands which are not within the scope of the applicable employee's duties. The Board of Directors, through a management company engaged by the Association, if any, shall be solely responsible for directing and supervising the Association's employees, if any.
10. No Unit User shall make disturbing noises in the Building or permit his family, servants, employees, agents, visitors or licensees to do so. In particular, no occupant of a Unit shall play (or permit to be played in a Unit or on the Common Elements appurtenant to it) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit occupants.
11. No radio or television installation or other electric equipment shall be permitted in any Unit if it interferes with the television or radio reception of another Unit.

12. With the exception of signs used or approved by the Developer and/or the Association, no signs, advertisements, notices or lettering may be exhibited, displayed, inscribed, painted or affixed in, or upon any part of the Common Elements or any part of a Unit so as to be visible outside the Unit, nor on any vehicle owned or controlled by Unit owners or owner's invites or guests, other than for service calls. Additionally, no awning, canopy, shutter, air-conditioning unit or other projection shall be attached to, hung, displayed or placed upon the outside walls, doors, balconies, windows, roof or other portions of the Building or on the Common Elements.

13. The Association may retain a pass-key to all Units. No Unit Owner shall alter any lock, nor install any new lock, without notice to the Board of Directors and the Unit Owner shall provide the Association with an additional key.

14. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit or on the Common Elements, except such as are normally used for normal hotel purposes.

15. A Unit Owner during the hurricane season must designate a responsible firm or individual to care for his Unit should the Unit suffer hurricane damage and furnish the Association with the name(s) of that firm or individual.

16. Food and beverages may not be consumed on the Common Elements except as specifically permitted by the Board of Directors.

17. Curtains, drapes and other window coverings (including their linings) which face on exterior windows or glass doors of Units shall be white or off-white in color, unless otherwise specifically approved by the Board of Directors, and must be in keeping with the decor of the entire building and property.

18. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit except a substance previously approved by the Board of Directors for energy conservation purposes.

19. No exterior antennae shall be permitted on the Condominium Property, provided that the Developer and/or the Association shall have the right (but not the obligation) to install and maintain community antennae, radio and television lines and security systems, as well as communication systems.

20. Children shall be the direct responsibility of their parents or legal guardians who must supervise them while they are within the Condominium Property. Full compliance with these Rules and Regulations and all other rules and regulations of the Association shall be required of children. Playing shall not be permitted in any of the lobbies, hallways, stairways, elevators, and lobby areas, and loud noises will not be tolerated.

21. Every Unit Owner and occupant shall comply with these Rules and Regulations as set forth herein, any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association (all as amended from time to time) to the extent applicable. Failure of a Unit Owner or occupant to comply shall be grounds for legal action which may include, without limitation, an action to recover sums due for damages, an action

for injunctive relief, and any combination of such actions. All costs associated with such action shall be reimbursed the Association by Unit Owner.

22. All events held by Unit Owner, its invitees or guests which would entail more than six additional cars must be pre-approved by Marco Cat, LLP or the Management of Olde Marco Island Inn and Suites, their successors or assigns as to parking. If such parking would interfere with parking availability, such may be denied without recourse or appeal.

In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the Owner or occupant of the reported or alleged infraction or infractions. Included in the notice shall be a date and time of the next Board of Directors meeting at which time the Owner or occupant shall present reasons why a fine should not be imposed. The Owner or occupant may be represented by counsel and may cross-examine witnesses.

(b) Hearing: The non-compliance shall be presented to the Board of Directors and a committee of Unit Owners formed for that purpose after which the Board of Directors and the committee shall hear reasons why a fine should not be imposed. A written decision of the Board of Directors and the committee shall be submitted to the Owner or occupant no later than twenty-one (21) days after the Board of Directors' meeting.

(c) Amount: The Board of Directors may impose a fine against the applicable person in such amount as may be permitted by the Association's By-Laws and by law.

(d) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition thereof.

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

(f) Infractions: Each day an infraction or violation occurs after the applicable party has received notice thereof shall be deemed to be a new infraction or violation.

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

23. These rules and regulations shall not apply to the Developer, to the Developer's agents, employees or contractors, or to Units owned by the Developer until they are conveyed. They shall apply, however, to all other Owners and occupants of Units. The Board of Directors may (but need not) grant relief to one or more Unit Owners from specific rules and regulations upon written request for such relief and good cause shown (as determined by the Board in its sole opinion).

## FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET

OLDE MARCO  
CONDOMINIUM ASSOCIATION, INC.

As of May, 2003

- Q: What are my voting rights in the Condominium Association?
- A: The owner or owners of a single condominium unit shall collectively be entitled to one vote for that condominium unit.
- Q: What restrictions exist on my right to use my unit?
- A: Olde Marco, a Condominium, is zoned as a commercial daily rental hotel property. An owner may not use the unit as a residence, and the owner's usage is restricted, as outlined in the condominium documents. The owner may choose any reputable and properly licensed rental agent to act on their behalf in rental of their Unit. There are no limitations regarding children on the property, except as to the reasonable actions and supervisory issues as provided for in the Declarations. Absolutely no pets are allowed in or around the property, including exclusion from individual Units. For more details, see Section 18 of the Declarations.
- Q: What restrictions exist on the leasing of my unit, and must the Unit be available for rental?
- A: Olde Marco will be operated as a resort, and units will be rented on a day-to-day basis, except when the Owner, or its designees, are in occupancy. There are restrictions on leases, see Paragraph 18 of the Declaration of Condominium. Under the combination of the zoning and terms stated in the Condominium documents, the Unit must be available for rental by a reputable, licensed rental agent.
- Q: How much are my assessments to the Condominium Association for my unit type and when are they due?
- A: The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by Unit Owners to meet the common expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration and the By-Laws. The estimated expenses for 2003, to be prorated based on date of purchase are \$314.48 per month, which equals \$943.45 per quarter.
- Q: Do I have to be a member in any other association? If so, what is the name of the association and what are my voting rights in this association? Also, how much are my assessments?
- A: No.
- Q: Am I required to pay rent or land use fees for recreational or other commonly used facilities? If so, how much am I obligated to pay annually?
- A: No.
- Q: Is the Condominium Association or other mandatory membership association involved in any court cases in which it may face liability in excess of \$100,000.00? If so, identify each such case.
- A: No.

**Note: THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, THE SALE CONTRACT, AND THE CONDOMINIUM DOCUMENTS.**