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**DECLARATION OF CONDOMINIUM
OF
MARBELLA, A CONDOMINIUM**

THIS **DECLARATION OF CONDOMINIUM** is made this 12th day of January, 2005, by **SOFRAN MARBELLA, LTD.**, a Florida limited partnership (the "Developer"), the owner of fee simple title of the land described herein, and with the intent and purpose of submitting said land and all improvements thereon to the condominium form of ownership, the Developer makes the following declarations.

I. SUBMISSION TO CONDOMINIUM OWNERSHIP.

The Developer hereby submits to the condominium form of ownership and use the Land, as more fully described in Article III hereof, together with the improvements now and hereafter situated thereon and the easements and rights appurtenant thereto pursuant to Chapter 718, Florida Statutes, as amended to the date hereof (the "Condominium Act").

II. NAME AND ADDRESS.

The name by which this condominium is to be identified is **MARBELLA, A CONDOMINIUM** (the "Condominium"), whose address is 917 1st Street South, Jacksonville Beach, Florida 32250.

III. THE LAND.

The land submitted to condominium (the "Land") is located in Duval County, Florida and is described in **Exhibit "A"** attached hereto, upon which will be constructed a residential building and other facilities more completely described in Article IV hereof. A survey of the Land is attached hereto and made a part hereof as **Exhibit "B"**. A site plan showing the general location of the Land in relation to the facilities and buildings, as hereinafter more fully described, is attached hereto as **Exhibit "B-2"**. **Exhibit "C"** is a graphic depiction of the improvements, including the Units, as hereinafter described. **Exhibits "A", "B", "B-2" and "C"**, together with this Declaration, identify the Common Elements and each Unit in the Condominium and their relative size and location.

IV. DEFINITIONS.

A. Units. Each Unit, together with all appurtenances thereto, shall for all purposes constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real

property, subject to the provisions of the condominium documents establishing this Condominium, the Condominium Act and any other covenants and restrictions or easements of record. Each owner shall be entitled to exclusive possession of his Unit subject to the provisions of the condominium documents and the Condominium Act.

The boundaries of each Unit shall be as follows:

- (1) The upper horizontal boundary of each Unit shall be the lower surface of the unfinished ceiling extended to an intersection with the vertical boundaries.
- (2) The lower horizontal boundary of each Unit shall be the plane of the upper surface of the unfinished floor extended to an intersection with the vertical boundaries.
- (3) The vertical boundaries of each Unit shall be the plane of the unfinished wall exposed to the interior of the Unit.

All glass and other transparent and/or translucent material or screens covering windows and doors and the material covering other openings in the exterior walls of the Units shall be construed to be within the boundaries or limits and part of the Unit exclusively served by such windows, doors, and other openings.

B. Common Elements. The term "Common Elements" as used herein shall mean and comprise all of the real property and improvements of the Condominium located upon the Land, except Units, including, without limitation: (1) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements; (2) easements of support in every portion of a Unit which contribute to the support of other Units and/or Common Elements; (3) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation, specifically excluding however, any utility main lines, distribution lines, force mains or collection lines and meters owned and maintained by the utility company servicing the Land; (4) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements; (5) fixtures owned or held for the common use, benefit and enjoyment of all owners of Units in the Condominium; (6) easements for ingress and egress serving the Condominium; (7) two (2) elevators; (8) the stairways not located within a Unit; (9) the exterior hallways; (10) the roof and exterior walls of the building; (11) a swimming pool and deck area; (12) barbeque terrace and morning terrace; (13) all paved and landscaped areas not within a Unit but located within the Land; (14) retention and storm drainage facilities; (15) entryway signage and entry gate; (16) paved surfaces for access and parking; (17) perimeter wall; (18) a Surface Water or Stormwater Management System and (19) all Limited Common Elements, including, but not limited to, Garage Parking Spaces and Outside Parking Spaces, terraces or balconies, all as more particularly described in Section C below.

C. Limited Common Elements. The term "Limited Common Elements" as used herein shall mean and comprise the Common Elements which are reserved herein, or assigned, or

granted separately herefrom, for the use of a certain Unit or Units to the exclusion of other Units, and consisting of the following:

(1) the exclusive use of any fixtures, equipment or appliances exclusively serving one Unit, including, if applicable, air conditioning compressors, ducts, pipes, wiring, controls, light fixtures or other apparatus serving only one Unit, even if the same are located outside of the Unit;

(2) exclusive use of either a patio, lanai, terrace or balcony, or porch attached to the exterior of the building and serving only one Unit;

(3) the exclusive use of either (a) any one, single car, covered garage parking space located on the Ground Floor of the condominium building ("Garage Parking Space") and any one, single car, outside parking space ("Outside Parking Space") or (b) two Garage Parking Spaces as assigned by Developer in its sole discretion. The Developer will assign to the Owner of each Unit, as a Limited Common Element, the exclusive use of either (i) two Garage Parking Spaces; or (ii) one Garage Parking Space and one Outdoor Parking Space. There will be forty four (44) Garage Parking Spaces available. The locations of these Garage Parking Spaces numbered G-1 through G-44, inclusive, have been designated on the site plan, which is attached hereto as "B-2" and on the Ground Level Floor Plan and Level 2 Floor Plan, which are attached hereto as pages 1 and 2 of Exhibit "C." There will be fifteen (15) Outside Parking Spaces available. The locations of these Outside Parking Spaces numbered P-1 through P-15, inclusive, have been designated on the Site Plan, which is attached hereto as Exhibit "B-2".

(4) the exclusive use of one storage unit ("Storage Unit" as assigned by the Developer in its sole discretion. The locations of the Storage Units numbered S-1 through S-22, inclusive, have been designated on the Ground Level Floor Plan, which is attached hereto as Exhibit "C."

D. Conveyance of Limited Common Elements. At the time of the conveyance by Developer to an Owner of a Unit, the special warranty deed will include an assignment of either two Garage Parking Spaces or one Garage Parking Space and one Outdoor Parking Space. Thereafter, the Garage Parking Space(s) or Outdoor Parking Space, if applicable, designated in said deed of conveyance shall be considered Limited Common Elements for the exclusive use of the Unit conveyed in the deed and shall not be conveyed, assigned or pledged separately from the Unit. In conveyances subsequent to the first conveyance from the Developer, whether or not the deed specifically refers to the Garage Parking Space(s) or Outdoor Parking Spaces, the same remain Limited Common Elements of the Unit to which they were originally assigned. After Developer has conveyed all of the Units, any spaces not designated or assigned to a Unit on a deed, if any, shall be considered a part of the Common Element and shall be available parking for guests or invitees of Unit Owners.

E. Mortgagee. The term "Mortgagee" shall mean and include any of the following entities owning, insuring, guaranteeing, or holding valid first mortgages on one or more Units in the condominium: banks, life insurance companies, Federal Savings & Loan Associations, Real Estate Investment Trusts, mortgage companies, and the Federal National Mortgage Association, and institutions and agencies of the federal government.

E. Surface Water or Stormwater Management System. The term Surface Water or Stormwater Management System means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

V. DESCRIPTION OF CONDOMINIUM PROPERTY.

A. Condominium Property. The improvements upon the Land which shall comprise the condominium property (hereinafter referred to as the "Condominium Property"), consist of one (1) twelve (12) story building (the "Condominium Building") containing twenty two (22) "Units"; stairways not in any of Units; and two (2) elevators; a fitness center; a social room; an entry lobby; an elevator lobby; a service lobby; an emergency generator room; mailroom; men's and women's bathrooms; a security station/reception area; a telephone room; fire control room; 22 tenant storage spaces; a parking garage located on the Ground Level and Lanai or Second level, which includes a total of forty four (44) Parking Spaces ("Parking Garage"); a storage room; one (1) building maintenance storage room; and one (1) trash room. The Condominium Property also includes a swimming pool and spa; pool bar area; one unisex bathroom; a pool equipment room; an outdoor parking area with fifteen (15) parking spaces; a perimeter wall; an entry gate; a barbeque terrace; a morning terrace and a Surface Water or Stormwater Management System. The first level of the Condominium Building (the "Ground Floor") contains a portion of the Parking Garage including 30 spaces; the trash room; a fitness center; a social room; an entry lobby; an elevator lobby; a service lobby; mailroom; men's and women's bathrooms; a security station/reception area; one (1) building maintenance room; 22 Tenant Storage Spaces; and a telephone room. The Units are of six types, described and depicted in the graphic depiction attached as a part of Exhibit "C" attached hereto as "North Residence", "South Residence", "Lanai North Residence", "Lanai South Residence", "Third Level North Residence" and "Third Level South Residence". Each of the floors of the Condominium Building numbered 2 through 12, inclusive, contain two unit types. The second level of the Condominium Building (the "Second Floor") contains two (2) units numbered 201 (which is the Lanai North Residence type); 202 (which is the Lanai South Residence type); two elevators and service corridor; an emergency generator room; fire pump storage room; a switchgear room; a meter room; a portion of the Parking Garage including 14 parking garage spaces; and the manager's residence. The third level of the Condominium Building (the "Third Floor") contains two (2) units numbered 301 (which is the North Residence type), 302 (which is the Third Level South Residence type) and two elevators and service corridor. The fourth level of the Condominium Building (the "Fourth Floor") contains two (2) units numbered 401 (which is the North Residence type), 402 (which is the South Residence type) and two elevators and service corridor. The fifth level of the Condominium Building (the "Fifth Floor") contains two (2) units numbered 501 (which is the North Residence type), 502 (which is the South Residence type) and two elevators and service corridor. The sixth level of the Condominium Building (the "Sixth Floor") contains two (2) units numbered 601 (which is the North Residence type), 602 (which is the South Residence type) and two elevators and service corridor. The seventh level of the Condominium Building (the "Seventh Floor") contains two (2) units numbered 701 (which is the North Residence type), 702 (which is the South Residence type) and two elevators and service corridor. The eighth level of the Condominium Building (the "Eighth Floor") contains two (2)

units numbered 801 (which is the North Residence type), 802 (which is the South Residence type) and two elevators and service corridor. The ninth level of the Condominium Building (the "Ninth Floor") contains two (2) units numbered 901 (which is the North Residence type), 902 (which is the South Residence type) and an elevator and service corridor. The tenth level of the Condominium Building (the "Ninth Floor") contains two (2) units numbered 901 (which is the North Residence type), 902 (which is the South Residence type) and two elevators and service corridor. The tenth level of the Condominium Building (the "Tenth Floor") contains two (2) units numbered 1001 (which is the North Residence type), 1002 (which is the South Residence type) and two elevators and service corridor. The eleventh level of the Condominium Building (the "Eleventh Floor") contains two (2) units numbered 1101 (which is the North Residence type), 1102 (which is the South Residence type) and two elevators and service corridor. The twelfth level of the Condominium Building (the "Twelfth Floor") contains two (2) units numbered 1201 (which is the North Residence Type), 1202 (which is the South Residence type) and two elevators and service corridor.

B. Graphic Description. Building Plans showing the site plan, elevation views; floor plans identifying each Garage Parking Space, Outdoor Parking Space, Unit Type and the location of each Unit Type on each floor; and Unit Type Plans which describe the dimensions of each Unit Type, the location of the elevators and other common elements are attached as Exhibit "B-2" and Exhibit "C" and constitute a graphic description of the Condominium Building.

C. Surveyor's Certificate. The construction of the improvements on the Land will be substantially complete at the time of recordation of this Declaration and there is attached hereto as the last page of **Exhibit "B"** a form of certificate of a surveyor authorized to practice in this state which provides that the construction of the Units to be conveyed are substantially complete so that the materials in **Exhibits "A"** through **"C"** attached hereto, together with the provisions of the Declaration describing such improvements are an accurate representation of the location and dimension of such improvements and that the identification, location and dimensions of the common elements and of each Unit to be conveyed can be determined from these materials. The Surveyor's Certificate will be signed upon completion of the improvement and will be recorded with this Declaration.

VI. APPURTENANCES TO UNITS.

A. Units. There shall be appurtenant and pass with title to each Unit the rights, shares and interests provided by the Condominium Act which shall be deemed to include, without limitation, the following:

- (1) An undivided percentage share as described in Article X hereof, in the Common Elements, as described above.
- (2) The right to use exclusively those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere to a certain Unit or Units as Limited Common Elements.
- (3) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time (as shown on **Exhibit "C"** hereto) and as it

may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time;

- (4) Non-exclusive easements, to be used and enjoyed in common by all present and future owners of Units in the Condominium, their guests and invitees, for use of those Common Elements or other facilities not designated elsewhere herein as Limited Common Elements including, without limitation, easements for the furnishing and maintenance of utility services to all parts of the Land over, across, in and through the Land and Building, as the fixtures and equipment therefor now exist and/or may be modified or relocated.
- (5) An exclusive easement for the unintentional and non-negligent encroachment by any Unit upon any other Unit, or upon any portion of the Common Elements, or vice versa, for any reason not caused by or resulting from the willful negligent act of Developer or any Unit owner or owners, including, without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachments, as an easement appurtenant to the encroaching Unit or other improvements, to the extent of such encroachment;
- (6) A nonexclusive easement, to be used and enjoyed by all present and future owners of Units in the Condominium, their guests and invitees, for use and enjoyment and for ingress and egress over, across and upon the paved areas for access and parking (as hereinafter defined).
- (7) The right to membership in the "Owners Association" (hereinafter defined) upon the terms and conditions set forth elsewhere herein.

VII. MARBELLA OWNERS ASSOCIATION, INC.

The entity responsible for the operation of this Condominium shall be Marbella Owners Association, Inc., a Florida corporation not-for-profit (the "Owners Association" or "Association"). A copy of the Association's Articles of Incorporation and Bylaws are attached hereto and made a part hereof as **Exhibits "D" and "E"**, respectively. The Association shall administer and manage the Condominium Property; provided, that the Association may, to the extent permitted by the Condominium Act, by contract, delegate its maintenance, management and operational duties and obligations; provided further, however, that the Developer hereby reserves the rights provided in the Condominium Act and this Declaration and the Bylaws of the Owners Association to initially manage and operate the Condominium Property.

VIII. VOTING RIGHTS OF UNIT OWNERS.

A. Owners Association. The owner or owners of each Unit shall become a member or members of the Owners Association automatically upon and simultaneously with the delivery

of a deed of conveyance of fee title of the Unit. There shall be appurtenant, and pass with title, to each Unit one vote as a member of the Owners Association, which may be exercised by the owner(s) as set forth in the Articles of Incorporation and Bylaws of the Owners Association. Membership in the Owners Association shall terminate when a Unit Owner's vested interest in the fee title to the Unit terminates. Membership in the Owners Association cannot be separately transferred, assigned or pledged in any manner except as an appurtenance to the respective Unit.

IX. AMENDMENT OF DECLARATION.

Except for amendments which the Developer is authorized and/or obligated elsewhere herein to make and except as may be elsewhere herein or in the Condominium Act otherwise specifically provided, this Declaration may be amended only in the following manner:

A. Notice. Notice of the subject matter of any proposed amendment to this Declaration shall be included in the notice of any meeting at which such proposed amendment is to be considered.

B. Proposal. Amendments to this Declaration may be proposed by (i) the Board of Directors (the "Board") of the Owners Association by (a) resolution adopted by a majority vote of the Directors elected from this Condominium present at any regular or special meeting of the Board at which a quorum is present; or (b) by a written instrument signed by a majority of the Board elected from this Condominium; or (2) by the owners of a majority of the Units, whether by vote of such owners as members of the Owners Association at a special or regular meeting of the members or by written instrument signed by them.

C. Adoption. Any amendment to this Declaration so proposed by the Board or members of the Owners Association shall be transmitted to the President of the Owners Association; or, in the absence of the President, to a Vice President or other acting chief executive officer. The meeting of the members of the Owners Association to consider the vote upon the proposed Amendment shall be held after due Notice in accordance with the Notice requirements contained in the Bylaws of the Owners Association, not sooner than fourteen (14) days, nor later than sixty (60) days from the date of receipt of the proposed Amendment. The Amendment may be considered at a Special or Annual Meeting, provided there is compliance with the time and notice requirements set forth herein and in the Bylaws of the Owners Association. Any member may, in writing signed by such member, waive notice of any such meeting in the manner provided for in the Bylaws of the Owners Association and such waiver, when delivered to the Secretary of the Owners Association for filing in its records, whether before, during or after such meeting shall be construed to be the equivalent of giving notice to such member. The proposed amendment may be adopted and shall become effective, by and upon the affirmative vote at such meeting of Unit Owners owning not less than sixty-six and two-thirds percent (66-2/3%) of the Units; provided, that any amendment so proposed may be adopted, without a formal meeting of the members, by an instrument executed and acknowledged with the formalities of a deed by members owning not less than sixty-six and two-thirds percent (66-2/3%) of all Units. Notwithstanding the foregoing provisions for adoption of amendments to this Declaration or any other provisions for amendment in the Condominium Act, no amendment shall:

- (1) Change the configuration or size of any Unit unless the record owner thereof and all record owners of liens thereon shall join in the execution and acknowledgment of the amendment;
- (2) Discriminate against any Unit Owner or against any Unit or building or class of buildings comprising part of the Condominium Property, unless the record owners of all affected Units and record owners of all liens thereon shall join in the execution and acknowledgment of the amendment;
- (3) Change the share of Common Elements appurtenant to any Unit or Units or the share of any Unit Owner in the Common Surplus, or increase the share of any Unit Owner(s) in the Common Expenses, unless the record owners of all Units and the record owners of all liens thereon shall join in the execution and acknowledgment of such amendment.
- (4) Make any change in Article XIV hereof, entitled "Insurance" nor in Article XV hereof, entitled "Reconstruction or Repair After Casualty" unless the record owners of all liens on Units shall join in the execution and acknowledgment of the amendment;
- (5) Adversely affect the lien or priority of any previously recorded mortgage to a Mortgagee.

D. Effective Date and Recording Evidence of Amendment. As to members of the Owners Association and persons having actual knowledge of the adoption of any amendment to this Declaration, such amendment shall be effective as of the date of adoption or otherwise as may be specified in the resolution or instrument creating the amendment. As to nonmembers of the Owners Association without actual knowledge of an amendment to this Declaration, the same shall be effective at the time the affected person acquires actual knowledge thereof or at the time of filing the amendment or certificate of amendment in the public records of Duval County, Florida, whichever occurs first. The President of the Owners Association, or in the absence of the President, a Vice President or other acting chief executive officer of the Owners Association, shall cause to be filed in the public records of Duval County, Florida, the original amendment to the Declaration, if it is in the form of an instrument executed and acknowledged by Unit owners and the holders of liens thereon, or a certificate of amendment, if it is a certification by the proper officers of the Owners Association that such amendment was adopted by the Owners Association at a meeting of the members. A true and correct copy of each such amendment or certificate of amendment shall be delivered, forthwith after adoption thereof, to the record owners of all Units and to the record owners of all liens on Units, by the President, Vice President or other acting chief executive officer of the Owners Association, but delivery of such copies shall not be a condition precedent to the effectiveness of any such amendment.

E. Amendment to Correct Omission or Error in Condominium Documents. Notwithstanding any provision to the contrary set forth in this Article or elsewhere in this Declaration, the Developer, or a majority of the Unit owners, may amend this Declaration to correct any inadvertent scrivener's error or omission which does not materially alter or affect the

rights of Unit owners, or add any surveyor's certificate(s) as described in Article V, Section C hereof, all without the consent or joinder of any Unit owner or Mortgagee of any Unit.

X. COMMON EXPENSES AND COMMON SURPLUS.

The term "Common Expenses", as used herein, shall mean all expenses for which the owners of Units in the Condominium shall be liable to the Owners Association, including, without limitation, all such expenses related to the maintenance, operation and repair of the Surface Water or Stormwater Management System. The term "Common Surplus," as used herein, shall mean the excess of all receipts from owners of Units in the Condominium, including, without limitation, assessments, rents, profits, and revenues on account of the Common Elements of the Condominium, over the amount of the Common Expenses of the Condominium. Each Unit Owner shall share the Common Expenses and shall own the Common Surplus and the Common Elements in percentage shares as set forth below. As to each North Residence Unit, including Units 301, 401, 501, 601, 701, 801, 901, 1001, 1101, and 1201, the percentage share shall be 5.1212%. As to each South Residence Unit, including Units 302, 402, 502, 602, 702, 802, 902, 1002, 1102, and 1202, the percentage share shall be 4.2731%. As to the Lanai North Residence Unit, Unit 101, the percentage share shall be 1.9941%. As to the Lanai South Residence, Unit 102, the percentage share shall be 4.0611%. As to the Third Level North Residence Unit, Unit 201, the percentage share shall be 5.1212%. As to the Third Level South Residence Unit, Unit 202, the percentage share shall be 4.2731%.

XI. MAINTENANCE, REPAIRS AND REPLACEMENTS

Responsibility for maintenance, repairs, and replacements of Condominium Property and property of Unit Owners located or situated within the Condominium shall be as follows:

A. Unit Owner's Responsibility. Each Unit Owner shall maintain, repair and replace, at his expense: his Unit, and the fixtures, equipment and appliances comprising a part thereof, located therein or exclusively serving the same even if located outside the Unit, and including, without limitation, all doors within the Unit and those which open to the Unit from the outside, interior walls and partitions, windows and window apparatus and glass, sliding glass and screen doors, heating and air conditioning equipment within the Unit, the air conditioning compressor located outside of the Unit, and the ducts, pipes, wirings, controls and other apparatus serving only that Unit, even if located outside the Unit. Each Unit Owner shall be responsible for the cost of keeping his Limited Common Elements in a clean and orderly condition. Notwithstanding the obligation of the Unit Owners for maintenance, repair and replacement of their Units, the proceeds of all insurance awards or payments under insurance carried by the Association for loss or damage to or within Units shall be applied against repairs and replacements to the extent that such award or payments exceed the deductible provisions of such insurance. If a Unit Owner fails to perform promptly his responsibilities of repair, maintenance and replacement, the Association shall be entitled to seek all remedies available at law, including the right to take legal action to require the Unit Owner to perform the responsibilities. The Association, in addition, shall have the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to

the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

B. Owners Association's Responsibility. The Owners Association shall be responsible for and shall assess against and collect from the owners of all Units in the Condominium the costs of maintaining, repairing, replacing and keeping in clean and orderly condition all of the Common Elements provided, however, that each Unit Owner shall keep his own patio or balcony clean and orderly. The Owners Association shall, at the expense of the owners of all Units in the Condominium, repair any and all incidental damage to Units resulting from maintenance, repairs and/or replacement of or to Common Elements. The Owners Association shall be responsible for repairing and replacing all Limited Common Elements and shall assess against and collect from the owner of all Units in the Condominium, the cost of such repair and replacement. The Owners Association shall have a reasonable right of entry into any Unit for the purpose of maintenance, repair or replacement of any Common Elements or any portion of the Unit to be maintained by the Owners Association or as necessary to prevent damage to the Common Elements or to a Unit or Units. The Owners Association shall have the right to grant permits, easements, and licenses over the Common Elements for the proper maintenance or operation of the Condominium. The Owner's Association shall be responsible for the maintenance, operation and repair of the Surface Water Or Stormwater Management System. Maintenance of the Surface Water Or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Surface Water Or Stormwater Management System shall be as permitted or, if modified, as approved by the St. Johns River Water Management District. The Owner's Association shall have a perpetual non-exclusive easement over all areas of the Surface Water Or Stormwater Management System for access to operate, maintain or repair the system. By this easement, the Owner's Association shall have the right to enter upon any portion of any lot which is a part of the Surface Water Or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Or Stormwater Management System as required by the St. Johns River Water Management District permit. Additionally, the Owner's Association shall have a perpetual nonexclusive easement for drainage over the entire Surface Water Or Stormwater Management System. No person shall alter the drainage flow of the Surface Water Or Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

C. Maintenance and Repair Necessitated by Negligence of Unit Owners. A Unit Owner shall be responsible for the expense of any maintenance, repair or replacement rendered necessary by the act, neglect or carelessness of such Unit Owner or his guests, employees, agents, lessees or other invitees, but only to the extent that such expense is not met by proceeds of insurance carried by the Association. In addition, the Association shall have all rights and remedies set forth in Section A of this Article XI.

D. Association Right to Perform Remedial Maintenance. The Association shall have the right, but not the obligation to perform remedial and continuing maintenance to Units, the Limited Common Elements and other areas which are the responsibility of the Unit Owner where it has been determined by the Association that the Unit Owner having responsibility for

the maintenance of the subject property has failed to properly maintain same in good condition as determined by the Association in its sole discretion. In such event, the Association shall provide written notice to the Unit Owner indicating the failure of maintenance and requesting that such failure be remedied and abated within ten (10) days thereafter. If such failure is not remedied and abated within said time period, in addition to the rights and remedies of the Association set forth in Section A of this Article XI, the Association shall have the right, but not the obligation to perform said maintenance and charge the Unit Owner for the cost of such maintenance and repair performed by the Association, or its designees.

XII. INSURANCE.

Insurance shall be carried and kept in force at all times in accordance with the following provisions:

A. Duty and Authority to Obtain. The Owners Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force all of such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Owners Association shall be purchased for the benefit of the Owners Association and the Unit Owners and their Mortgagees and all policies of insurance shall be deposited with and held by the "Insurance Trustee" (as hereinafter described). A certificate evidencing a Mortgagee endorsement shall be issued to the Mortgagee of each Unit. The owner of each Unit may, at the expense of such owner, obtain insurance coverage against damage to and loss of the contents of the Unit, including wall coverings, floor coverings and ceiling coverings, personal liability for injury to and death of persons and damage to and loss of personal property of others, and against additional living expenses, provided, that each policy of such insurance purchased by a Unit owner shall, where such provision is available, provide that the insurer waives its right of subrogation as to any claim or claims against other Unit Owners, the Owners Association, and their respective employees, agents, guests and invitees.

B. Required Coverage. The Owners Association shall purchase and carry casualty insurance covering all of the buildings and other improvements of the Condominium, including, without limitation, Units and Common Elements, in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the Board of Directors of the Owners Association; such insurance to include or afford protection against:

- (1) Loss or damage by fire or other hazards covered by standard extended coverage or for other perils by endorsements;
- (2) Such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings and other improvements similar in construction, location, and use to the buildings and other improvements of the Condominium, including, without limitation, vandalism, malicious mischief, windstorm, water damage, and war risk insurance, if available. The insurance obtained pursuant to this subsection will not provide insurance coverage for wall, floor and ceiling coverings within a Unit.

- (3) Comprehensive general liability insurance in the amount of \$1,000,000 for personal injury and \$500,000 for property damage and an umbrella policy of \$1,000,000.00 for both, insuring the Owners Association, the Board of Directors, the Management Firm, at the discretion of the Board of Directors, and each Unit Owner for claims arising out of or in connection with the ownership, operation or maintenance of any of the Condominium Property. This coverage shall exclude Unit Owner liability coverage for claims arising in connection with that portion of the property used and occupied exclusively by a particular Unit Owner. Such comprehensive general liability insurance shall also cover cross liability claims of one insured against the other and water damage and fire legal liability coverage. The Board of Directors shall review such limits once a year.
- (4) Workmen's Compensation insurance to meet the requirements of law; and
- (5) Loss or damage by flood, to the extent, if any, required or necessitated by law, including, without limitation, the Flood Disaster Protection Act of 1973, or any similar law or regulation.

C. Optional Coverage. The Owners Association may purchase and carry such other insurance coverage, other than title insurance, as the Board of Directors of the Owners Association, in its sole discretion, may determine from time to time to be in the best interests of the Owners Association and Unit Owners, including Directors' liability insurance coverage, or as an institutional Mortgagee may reasonably require while it holds a mortgage encumbering any Unit.

D. Premiums. Premiums for all insurance obtained and purchased by the Owners Association shall be paid by the Owners Association. The cost of insurance premiums, and other incidental expenses incurred by this Owners Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from Unit Owners as Common Expenses.

E. Additional Provisions. Any policy obtained by the Owners Association must provide for the following, if available:

- (1) Recognition of any Insurance Trust Agreements.
- (2) Waiver of the right of subrogation against Unit Owners individually.
- (3) The insurance will not be prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.
- (4) The policy shall be primary in the event that the Unit Owner has other insurance covering the same loss.

- (5) The policy may not be canceled or substantially modified without at least sixty (60) days prior written notice to the Owners Association and each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

F. Assured. All policies of insurance obtained and purchased by the Owners Association shall be for the benefit of the Owners Association, its members and their Mortgagees, as their interests may appear. All proceeds of insurance policies purchased by the Owners Association shall be payable to the Owners Association. The proceeds from insurance against any casualty loss shall be held for the use of the Owners Association, its members and their respective Mortgagees, as their interests may appear, to be applied or distributed in the manner herein provided. The Owners Association is hereby constituted and appointed agent for all Unit Owners, with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the Owners Association is granted full right and authority to execute, in favor of any insurer, a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

G. Insurer. All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Owners Association shall be bound by the Owners Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Owners Association.

H. Insurance Trustee. The Owners Association shall have the right, but not the obligation to designate the Insurance Trustee and all persons beneficially interested in such insurance coverage shall be bound by the Owners Association's selection of the Insurance Trustee. If the Owners Association fails or elects not to appoint such Insurance Trustee, the Owners Association will perform all obligations imposed upon such Trustee by this Declaration.

The Insurance Trustee shall be either a bank with trust powers, doing business in the State of Florida, the Board of Directors of the Owners Association or an attorney who is a member of the Florida Bar. The Insurance Trustee, if a bank or attorney, shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of policies, nor for the failure to collect any insurance proceeds. The duties of the Insurance Trustee, if a bank or attorney, shall be to hold such insurance policies as may be placed with it pursuant to this Article XII, Section H and to receive such proceeds of casualty insurance as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Owners Association, Unit Owners and their respective mortgagees, to be disbursed as herein provided. The Owners Association shall pay a reasonable fee to the Insurance Trustee, if a bank or attorney, for services rendered hereunder and shall pay such costs and expenses as the Insurance Trustee may incur in the performance of its duties hereunder, such fees and costs to be assessed against and collected from Unit Owners as a Common Expense. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then only for such money as may come into the possession of the Insurance Trustee. If and when the Insurance Trustee is required to distribute insurance proceeds to Unit Owners and their mortgagees, as their respective interests may appear, the Insurance Trustee, if a bank or attorney, may rely upon a certificate of the President and Secretary of the

Owners Association, executed under oath and provided to the Insurance Trustee upon request to the Owners Association, such certificate to certify the name or names of the owners of each Unit, the mortgagee(s) thereof, and the respective percentages of any distribution which is to be made to the Unit Owner(s) and mortgagee(s), as their respective interests may appear. If and when insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder(s) of any Mortgage or Mortgages encumbering a Unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of indebtedness secured by such Mortgage(s), unless the insurance proceeds represent a distribution to the Unit Owners and the mortgagee(s) thereof, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the owner(s) of the Unit, and the mortgagee(s) thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

I. Application of Insurance Proceeds. The proceeds of casualty insurance paid to the Insurance Trustee shall be applied and paid as follows:

- (1) **Common Elements Only.** The proceeds paid to the Insurance Trustee for loss of or damage to real property or improvements constituting Common Elements only shall be applied to the repair, replacement or reconstruction of such loss or damage. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Insurance Trustee to the owners of all Units, and their respective Mortgagees, as their interests may appear, in shares equal to each Unit owners' percentage interest in the Common Elements. If the insurance proceeds shall be insufficient to pay the cost of the repair, replacement or reconstruction of such Common Elements, the Owners Association shall deposit with the Insurance Trustee, from any Owners Association Reserve Fund which may have been established for such Common Element repair or replacement, the difference between the total cost of repairing, replacing or reconstructing such loss or damage to the Common Elements and the amount of the insurance proceeds. If no such Owners Association Reserve Fund has been established, or if any such Owners Association Reserve Fund has been established and is insufficient to pay said difference, the Owners Association shall assess the amount of the difference against, and collect it from, all Unit Owners, as a Common Expense.
- (2) **Units.** The proceeds paid to the Insurance Trustee for loss of or damage to a building, constituting Common Elements, and one or more Units thereof only, shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in such building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements and

Units, the excess shall be paid by the Insurance Trustee to all Unit Owners and their respective Mortgagees, as their interests may appear, in shares equal to each Unit Owners' percentage interest in the Common Elements. If the insurance proceeds shall be insufficient to pay for the repair, replacement or reconstruction of the Common Elements and all Units which have been damaged or destroyed, the Owners Association shall assess the amount of the difference against, and collect it from all Unit Owners, as a Common Expense and deposit such sum with the Insurance Trustee to be applied by the Insurance Trustee toward the total cost of repairing, replacing or reconstructing all of such damaged or destroyed Common Elements and Units. If and when insurance proceeds are paid to the Owners Association for any casualty loss, the holder(s) of any mortgage or mortgages encumbering a Unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage and shall not have the right to elect to apply insurance proceeds to the reduction of indebtedness secured by such mortgage(s), unless the insurance proceeds represent a distribution to the owner(s) of the Unit and the Mortgagee(s) thereof, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the owner(s) of the Unit, and the Mortgagee(s) thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

J. Deposit to Insurance Trustee After Damage. Within sixty (60) days after a loss of or damage to Condominium Property covered by casualty insurance, the Owners Association shall obtain estimates of the cost of repairing, replacing or restoring the same, including the cost of professional fees and any construction bond which the Board of Directors may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the total costs thereof, the additional money required to pay the total cost thereof, whether it is to be paid by one or more Unit Owners, shall be deposited with the Insurance Trustee not later than thirty (30) days from (i) the day on which the Insurance Trustee receives the insurance proceeds or (ii) the date of receipt of cost estimates for repair or replacement, whichever last occurs.

XIII. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

Whether, and the manner in which, any or all of the Condominium Property which shall be damaged or destroyed by casualty shall be repaired, reconstructed or replaced shall be determined as follows:

A. Condominium Building.

- (1) **Substantial Destruction of the Building.** If seventy-five (75%) percent or more of the Units within the Condominium are totally destroyed,

neither the Building(s) nor any of the improvements comprising Common Elements shall be reconstructed, and the Condominium shall be terminated, unless seventy-five percent (75%) of the owners of Units agree in writing, within sixty (60) days after the date of such destruction, to reconstruct the same and/or unless any policy or policies of casualty insurance covering the same shall require reconstruction thereof as a condition precedent to the payment of proceeds thereunder, and in either case as long as the then applicable zoning and other regulatory laws and ordinances shall allow the same to be reconstructed.

- (2) **Partial Destruction to the Building.** If less than seventy-five (75%) percent of the Units within the Condominium are wholly or partially damaged and twenty-five (25%) percent of the Units remain habitable, the damaged or destroyed Common Elements and/or Units shall be repaired or reconstructed so that the Building(s) and/or Unit(s) shall be restored to substantially the same condition as existed prior to such damage or destruction, unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere herein provided that the Condominium shall be terminated.

B. Common Elements. Damaged or destroyed improvements constituting part of the Common Elements shall be repaired, reconstructed and/or replaced unless the Condominium is terminated by virtue of substantial destruction to the Units occurring simultaneously therewith, or, by agreement in accordance with this Declaration after partial destruction to the Units.

C. Responsibility. If the damage or destruction shall be limited only to one or more Units for which the responsibility of maintenance, repair and replacement is that of the affected Unit Owners, then such Unit Owners shall be responsible for carrying out the repair or reconstruction thereof. In all other instances of damage or destruction, the Owners Association shall be responsible for carrying out the repair and reconstruction thereof.

D. Plans and Specifications. Repair or reconstruction of Condominium Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed, provided that the Board of Directors of the Owners Association may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable.

E. Certificate. The Insurance Trustee may rely upon a certificate executed by the President and Secretary of the Owners Association to determine whether or not damage or destroyed Condominium Property shall be repaired or reconstructed.

F. Construction Funds. All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Owners Association from Unit Owners, shall be disbursed toward payment of such costs in the following manner:

- (1) **Owners Association.** If the total funds assessed against and collected from Unit Owners by the Owners Association for payment of repair and

reconstruction costs is more than \$100,000.00, then all such sums shall be deposited by the Owners Association with and disbursed by the Insurance Trustee. In all other cases the Owners Association shall hold such sums so assessed and collected and shall disburse the same in payment of the costs of reconstruction and repair.

- (2) **Insurance Trustee.** The proceeds of insurance collected on account of a casualty, and the sums assessed against and collected from Unit Owners by the Owners Association and deposited with the Insurance Trustee shall constitute a construction fund which shall be disbursed in payment of the costs of repair and reconstruction in the following manner:
- (a) **Unit Owner.** The portion of insurance proceeds representing damage for which the responsibility of repair and reconstruction is upon one or more, but less than all Unit Owners, shall be paid by the Owners Association to the affected Unit Owners and, if any of such Units are mortgaged, to the Unit Owners and their Mortgagees jointly.
- (b) **Owners Association — Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Owners Association is less than One Hundred Thousand and No/100 Dollars (\$100,000.00), then the Construction fund shall be disbursed in payment of such costs upon the order of the Owners Association; provided, however, that upon request to the Insurance Trustee by a Mortgagee which is a beneficiary of an insurance policy the proceeds of which are included in the Construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.
- (c) **Owners Association — Major Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Owners Association is more than One Hundred Thousand and No/100 Dollars (\$100,000.00), then the construction fund shall be disbursed by the Insurance Trustee in payment of such costs in the manner required by the Board of Directors of the Owners Association and upon approval of an architect registered to practice in Florida and employed by the Owners Association to supervise the work.
- (d) **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 the construction fund after payment of all costs of 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 herein

stated; except, however, that the part of a distribution to a beneficial owner which is not in excess of assessment paid by such owner into the construction fund shall not be made payable to any Mortgagee.

- (e) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee, if a bank or attorney, shall not be required to determine whether or not assessments paid by Unit Owners shall be deposited by the Owners Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Owners Association or upon 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. Instead, the Insurance Trustee may rely upon a certificate of the Owners Association made by its President 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 name of the payee and the amount to be paid, provided that when a mortgagee is herein required to be named as payee the Insurance Trustee shall also name the mortgagee as payee; and further provided that when the Owners Association, or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Owners Association shall be first obtained by the Owners Association.

XIV. USE RESTRICTIONS.

Use of the Condominium Property shall be in accordance with and subject to the following provisions so long as the Condominium exists:

A. Units. Each of the Units shall be occupied only by a single family, its servants and guests or lessees, as a residence and for no other purposes. Except as the right to divide and subdivide is permitted under Article XX of this Declaration, no Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred.

B. Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

C. Nuisances. No immoral, noxious, offensive or unlawful activity shall be carried on within the Condominium Property nor shall anything be done therein or thereon which may be or become an annoyance to Unit owners, their guests or invitees. No nuisance shall be permitted within the Condominium Property nor shall any use or practice be permitted which is

or becomes a source of annoyance to Unit Owners or which interferes with the peaceful use and possession thereof by the Unit Owners. Additionally, nothing shall be done or maintained on any Unit, or upon any Common Elements or Limited Common Elements, which will increase the rate of insurance on any Unit, or the Common Elements, Limited Common Elements or other portions of the Condominium Property, or result in the cancellation thereof. Nothing shall be done or maintained in any Unit, upon the Common Elements or Limited Common Elements, which will be in violation of any law, ordinance, statute, regulation, or rule of any governmental authority having jurisdiction over the Condominium Property or portion thereof or in violation of any provision of this Declaration, the Articles or Bylaws as they may be amended from time to time or in violation of any rules and regulations which may be promulgated by the Board of Directors of the Association from time to time, as elsewhere provided herein. No waste shall be committed in any Unit, the Common Elements, the Limited Common Elements or any other portion of the Condominium Property.

Notwithstanding the foregoing, each Unit Owner hereby acknowledges that all activities undertaken by Developer, Developer's affiliates, their respective lessees, licensees and designees shall be deemed as not constituting a nuisance and such activities and the parties performing them shall be specifically exempted from this provision.

D. Leasing. Entire Units, but not less than entire Units, may be leased for minimum terms of seven months; provided occupancy is only by the tenant and his family, servants and guests. The form of lease is subject to approval by the Association. The Unit Owner and the tenant will be jointly and severally liable to the Association for any damage to Condominium Property and to pay any claim for injury or damage to property caused by the negligence of the tenant.

E. Parking.

(1) Parking areas are solely for those vehicles authorized by the Declaration and the rules and regulations of the Association, as promulgated and amended from time to time. No vehicle prohibited by any of the aforementioned rules and regulations shall be permitted to be parked or stored at any place on the Condominium Property. No vehicle which cannot operate on its own power shall be permitted to remain on the Condominium Property for more than twenty-four (24) hours.

(2) No vehicle maintenance or repairs shall be performed on the Condominium Property, except for emergency repairs.

(3) Vehicles shall only be washed in designated vehicle wash areas, if any.

F. Antennae. No aerial or antenna or satellite dish or disc shall be erected or maintained on or about the exterior of any Unit, without the express written consent of the Developer or the Association.

G. No Signs. No signs of any kind shall be exhibited in any way on the Land other than those placed or erected by the Developer or its successor, or which have been approved, in writing, by the Developer, or by the Owners Association after transfer of control of the

Condominium to the Unit Owners as provided in the Articles of Incorporation of the Owners Association.

H. Use of Units. No Unit may be used for commercial purposes, except that, until all Units have been conveyed by Developer, Developer reserves the right to use a Unit as a model and/or sales office.

I. Balconies/Terraces. No carpeting shall be permitted on balconies or terraces and nothing shall be placed on balcony railings. Any screen enclosures shall be of uniform design and subject to the prior approval of the Owners Association.

J. Pets. No pets shall be permitted to reside in any Unit or allowed on the Condominium Property except by prior written consent of the Board of Directors of the Association. Owners maintaining pets on the Condominium Property, or whose guests, lessees or invitees bring any animal upon the Condominium Property, shall be responsible for, and bear the expense of, any damage to persons or property resulting therefrom.

K. Regulations. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the Board; provided, however, that all such regulations and amendments thereto may be changed or revoked by two-thirds of the Unit Owners, who are present at any meeting at which a quorum exists. The Board shall have the power to grant variances to the rules and regulations from time to time. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request.

L. Rights of the Developer. Until Developer has completed and sold all of the Units, neither the Unit Owners nor the Owners Association nor the use of the Condominium Property shall interfere with the completion of the proposed improvements and the sale of the Units. Developer may make such use of the unsold Units and common elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, the showing of the Land, and the display of signs, provided such rights shall not be exercised in an unreasonable manner; and further provided, that Developer retains the right, so long as it holds fee simple title to any Unit in the Condominium, to establish a plan for leasing any Unit or Units in the Condominium, whether such Unit or Units be owned by it or not which Unit Owners could elect to participate in, at their option, and thereafter to administer such plan for voluntarily participating Unit Owners on such terms as Developer may provide.

XV. COMPLIANCE AND DEFAULT.

Each Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, the Articles of Incorporation and Bylaws of the Owners Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Copies of each of these documents, and all other relevant Owners Association documents shall be retained for inspection at the office of the Owners Association, or at such other place in Duval County, Florida, as Developer may designate from time to time. Failure of the Unit Owner to comply therewith shall entitle the Owners Association or other Unit Owners to the following relief in addition to the remedies provided by the Condominium Act:

A. Right to Enforce. The Owners Association shall have the primary right to enforce the Rules and Regulations, including the right to impose fines as are authorized by said Rules and Regulations.

B. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents, lessees or other invitees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

C. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, the Articles of Incorporation and Bylaws of the Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.

D. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws of the Association, the Covenants, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

XVI. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT.

To provide the funds necessary for proper operation and management of the Condominium, the Owners Association has been granted the right to make, levy and collect assessments against the owners of all Units. The following provisions shall govern the making, levying and collecting of such assessments; the payment of the costs and expenses of operating and managing the Condominium and the property owned by the Owners Association.

A. Determination of Assessments. Each Unit Owner shall pay to the Owners Association the percentage share of the total assessments as deemed necessary by the Board of Directors for the operation of the Condominium Property and the Common Elements.

B. Time for Payment. The assessment levied against the owner of each Unit and his Unit shall be payable monthly on the first day of each calendar month or in a manner as shall from time to time be fixed by the Board as permitted by the Condominium Act.

C. Annual Budget of Association.

(1) **In General.** Subject to the requirements of the Condominium Act and the Bylaws, the Board shall establish an Annual Budget in advance for each fiscal year which shall estimate all expenses for the forthcoming fiscal year required for the proper operation, management and maintenance of the Condominium, including, when deemed necessary or advisable by the Board, a reasonable allowance for contingencies and reserves and shall estimate all income to be collected during the year. The Annual Budget shall also include funds to be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage

easements. Upon adoption of each annual budget by the Board, copies thereof shall be delivered to each Unit Owner, and the assessment for the year shall be based upon such budget. Failure to deliver a copy of the budget to a Unit Owner shall, however, not affect the liability of such owner for such assessment. Should the Board at any time determine, in the sole discretion of the Board, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

D. Reserve Fund. The Board, in establishing each Annual Budget, shall include therein a sum to be collected and maintained as a reserve fund for the capital expenditures, deferred maintenance and replacement of Common Elements and personal property held for the joint use and benefit of the owners of all Units. Capital expenditures payable from this reserve account shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, if applicable. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. In addition, a working capital fund must be established for the initial months of the Condominium operations equal to two months' estimated Common Element charge for each Unit.

E. Use of Owners Association Funds. All monies collected by the Association, shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles, and Bylaws. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of Common Elements, including, without limitation, Common Surplus, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit.

F. Delinquency or Default. The payment of any assessment or installment thereof due to the Owners Association, shall be in default if not paid to the Owners Association on or before the due date thereof. When in default, the delinquent assessments or installments thereof shall bear interest at the rate determined from time to time by the Board until the same, and all interest due thereon, has been paid in full. A late charge may be assessed in such amounts as may be determined from time to time by the Board.

G. Personal Liability of Unit Owner. The owner(s) of each Unit shall be personally liable, jointly and severally, as the case may be, to the Owners Association for the payment of all assessments, whether the assessment be regular or special; interest and late charges on such delinquent assessments or installments thereof as above provided; and for all cost of collecting the assessments and interest thereon, including reasonable attorney's fees, whether suit be brought or not, levied or otherwise coming due while such person(s) or entity own(s) a Unit.

H. Liability Not Subject to Waiver. No owner of a Unit may exempt himself from liability for any assessment levied against such owner and his Unit by waiver of the use or

enjoyment of any of the Common Elements, or by abandonment of the Unit, or in any other manner.

I. Lien for Assessment. The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements or Limited Common Elements which lien shall and does secure the monies due for all: (1) assessments levied against the owner(s) of and each Unit, and (2) interest, if any, which may become due on delinquent assessments owing to the Owners Association, and (3) costs and expenses, including a reasonable attorney's fee, which may be incurred by the Owners Association in enforcing its lien upon the Unit and its appurtenances, including those which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure (4) any and all late fees incurred and unpaid. The lien granted to the Owners Association may be established and foreclosed in the Circuit Court in and for Duval County, Florida, and in any suit for the foreclosure of said lien, upon approval by the Court, the Owners Association shall be entitled to rental from the owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a Receiver for said Unit. If the Court requires payment of rent, it is agreed that the rental required to be paid shall be equal to the rental charged on comparable types of Units in Duval County, Florida. The lien of the Owners Association shall also secure all advances for taxes, and payments on account of superior mortgages, liens or encumbrances made by the Owners Association to preserve and protect its lien, together with interest at the rate of eighteen percent (18%) per annum on all such advances made for such purposes.

J. Recording and Priority of Lien. The claim of lien of the Owners Association shall be effective from and relate back to the date of recording of this Declaration, except as to first mortgages of record, in which event the claim of lien shall be effective from and after recording, in the Public Records of Duval County, Florida, a claim of lien stating the description of the Unit encumbered thereby, the name of the record owner, the amount and the date when due. All claims of lien shall continue in effect for a period of one (1) year from the date of recording unless, prior to the expiration of such one (1) year period, the Association commences foreclosure proceedings. Such claims of lien shall include assessments which are due and payable when the claim of lien is recorded and assessments coming due subsequent to the date of recording said claim of lien, plus interest, costs, attorney s fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Owners Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien of the Owners Association shall be subordinate to the lien of any first mortgage recorded prior to the claim of lien.

K. Effect of Foreclosure or Judicial Sale. In the event that any person, firm, partnership or corporation shall acquire title to any Unit and its appurtenant undivided interest in Common Elements by virtue of any foreclosure, deed in lieu of foreclosure, or judicial sale, such person, firm or corporation so acquiring title shall be liable and obligated for assessments or common expense which became due prior to the mortgagee's acquisition of title; however, a first mortgagee's liability for assessments or common expense accruing prior to acquisition of title is limited to assessments or common expenses accruing within a period not exceeding six (6) months prior to acquisition of title and; provided, further, the first mortgagee's liability shall not

exceed one percent (1.0%) of the original mortgage debt and; further, that the first mortgagee's liability does not commence until thirty (30) days after the date the first mortgagee received the last payment of principal or interest under the terms of the first mortgage, and shall be liable and obligated for assessments and common expenses, as shall accrue and become due and payable for the Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title. In the event of the acquisition of title to a Unit by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all Units as a part of the Common Expense, although nothing herein contained shall be construed as releasing the party personally liable for such delinquent assessment from the payment thereof or the enforcement of collections of such payment by means other than foreclosure.

L. Effect of Voluntary Transfer. When the owner of any Unit proposes to lease, sell, or mortgage the Unit, the Owners Association, upon written request of the owner of such Unit, shall furnish to the proposed lessee, purchaser or Mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Owners Association by the owner of such Unit. Such statement shall be executed by any officer of the Owners Association and any lessee, purchaser or Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Owners Association shall be bound by such statement.

In the event that a Unit is to be leased, sold, or mortgaged at the time when payment of any assessment against the owner of the Unit and Unit due to the Owners Association shall be in default (whether or not a claim of lien has been recorded by the Owners Association) then the rent, proceeds of such sale, or mortgage proceeds, as the case may be, shall be applied by the lessee, purchaser, or Mortgagee first to payment of any then delinquent assessment or installment thereof due to the Owners Association before payment of the balance of such rent, proceeds of sale or mortgage to the owner of the Unit responsible for payment of such delinquent assessment.

M. Liability for Assessments. In any conveyance of a Unit (except for limitations applying in conveyances in lieu of foreclosure and judicial sale, as provided in subparagraph K of this Article XVI), the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor made prior to the time of such conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Owners Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

N. Commencement of Assessments. The date of commencement of the assessments against each Unit, as described in this Article, shall be established by the Board of Directors of the Owners Association.

XVII. REGISTRY OF OWNERS AND MORTGAGEES.

The Owners Association shall at all times maintain a Register of the names of the owners and Mortgagees of all Units. Upon the transfer of title to any Unit, the transferee shall notify the Owners Association in writing of his interest in such Unit together with recording information identifying the instrument by which such transferee acquired his interest in the Unit. The owner of each Unit encumbered by a mortgage shall notify the Owners Association of the name and address of the Mortgagee, the amount of such mortgage, or mortgages, and the recording information identifying the same. The holder of any mortgages encumbering a Unit may notify the Owners Association of any such mortgage(s), and upon receipt of such notice, the Owners Association shall register in its records all pertinent information pertaining to the same.

XVIII. ALTERATIONS OF AND IMPROVEMENTS TO UNITS AND COMMON ELEMENTS.

A. Developer's Rights. Upon approval by the Owners of a majority of the Units within the Condominium, this Declaration may be amended to change the interior design and arrangement of, and to alter the boundaries between Units owned by Developer and to reduce the total number of Units by combining Units with all or a portion of another Unit provided that the percentage share in the Common Elements and the percentage share of Common Expense and Common Surplus in the new Unit be increased so that the share of the Common Element and share in the Common Expense and Common Surplus previously allocated to the former Unit are included on the new Unit or Units so created, provided that no such change shall increase the number of Units without consent to such an amendment to this Declaration of Condominium by the Unit Owners, their Mortgagees and the Owners Association, as provided for elsewhere herein. Any amendment to this Declaration to reflect the alteration of the boundaries of a Unit or Units owned by Developer may be executed and acknowledged by the Owners of a majority of the Units in the Condominium and shall not require the consent or joinder of additional Unit Owners and/or their Mortgagees.

B. Rights of Unit Owners and Owners Association. Except for the rights of the Developer reserved in Section A of this Article XVIII above and except for the right of the Unit Owner to construct the interior finishing of that portion of the Unit which is not visible from the Common Elements, neither a Unit Owner nor the Owners Association shall make any alterations, improvements or additions to Units, Common Elements, Limited Common Elements, or the Condominium Building unless all required approvals, as hereinafter provided, are first obtained.

- (1) **Interior Alterations.** With regard to any alterations, improvements, or additions of any kind or nature, to a Unit or Limited Common Element, which affects or is visible, from the common elements, including, but not limited to, removing, in whole or in part, replacing, rerouting, or otherwise affecting any column, bearing wall or partition, pipe, duct, wire or conduit, or obstructing any easement herein provided for, the Unit Owner shall be required to submit plans for such alteration, improvements or additions to the Owners Association Board for prior approval. The Owners Association Board may request additional information from the Unit Owner prior to issuing its approval or

disapproval of the submitted plans. The Owners Association Board shall be required to approve or disapprove the proposed plans within thirty (30) days of submission of the same by the Unit Owner. In the event the Owners Association fails to approve or disapprove said plans within said thirty (30) day period, the Board shall be deemed to have approved the plans.

- (2) **Exterior Alterations.** With regard to any alterations, modification, improvements or additions which shall: (1) remove or change the style, pattern, material, texture or outside color of any door, window, screen, fixture, equipment, or appliance in or on an exterior Unit or building wall, or (2) cover, from the inside or outside, the glass or other transparent and/or translucent material in any exterior door or window with, or apply or affix thereto, any material or substance which shall render the same opaque or change the exterior color thereof, except interior draperies, curtains, shades or shutters, which are lined, backed, covered or painted on the side visible from the exterior with a neutral color material, or (3) affix to or over any exterior door or window, or otherwise install on the exterior, of any Unit or building, any storm or hurricane shutter or awning or any protective or decorative panel, paneling, trim, enclosure, fixture, or appliance, (4) otherwise change, modify, or alter the exterior of any Unit or building so that it thereby differs in appearance from any other Units or buildings, of the same type, or (5) otherwise affect or be visible from the exterior of the Condominium Building, the Unit Owner or Owners Association, whichever is applicable, shall be required to obtain approval from the Owners Association as more fully set forth below:

- (a) **Owners Association.** The Unit Owner shall be required to submit plans for such alteration, improvements or additions to the Board of Directors of the Owners Association for prior approval. The Owners Association Board may request additional information from the Unit Owner prior to issuing its approval or disapproval of the submitted plans. The Owners Association Board shall be required to approve or disapprove the proposed plans within thirty (30) days of submission of the same by the Unit Owner. In the event the Owners Association fails to approve or disapprove said plans within said thirty (30) day period, the Board shall be deemed to have approved the plans.

In any litigation or other dispute arising out of this Article and if the Owners Association shall be the prevailing party, it shall be entitled to reimbursement of its costs incurred in the litigation or dispute, including, without limitation, reasonable attorneys' fees.

XIX. TERMINATION.

The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act.

A. Destruction. In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or major damage, the Condominium plan of ownership will be thereby terminated without agreement.

B. Agreement. The Condominium may be terminated at any time by the approval in writing of all of the Unit Owners of the Condominium, and by all record owners of Mortgagees upon Units therein owned by Institutional Mortgagees and other Mortgagees approved by the Owners Association. If the proposed termination is submitted to a meeting of the members of the Owners Association, the notice of which meeting gives notice of the proposed termination, and if the approval of 75% of the owners of Units, and of the record owners of all mortgages upon Units in the Condominium are obtained not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the Units of the dissenting owners for the period ending on the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

- (1) **Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Units to be purchased of an agreement to purchase signed by the record owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating owner and shall agree to purchase all of the Units owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.
- (2) **Price.** The sales price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Owners Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Owners Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.
- (3) **Payment.** The purchase price shall be paid in full in cash or shall include assumption of any existing mortgage financing plus cash.
- (4) **Closing.** The sale shall be closed within ten (10) days following the determination of the sales price.

C. **Certificate.** The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Owners Association executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Duval County, Florida.

D. **Shares of Owners After Termination.** After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Owners Association as tenants in Common in undivided shares, and their respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owner's Units prior to the termination as set forth elsewhere herein.

E. **Amendment.** This Article cannot be amended without consent of all Unit Owners and of all owners of mortgages required to approve termination by agreement.

XX. CONDEMNATION.

A. **General.** Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Owners Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Owners Association, as hereinafter provided in this Article XX.

B. **Units.** If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Elements, then the award shall be disbursed as provided by law. All related matters, including, without limitation, alteration of the percentage shares of undivided interest of the owners in the Common Elements, shall be handled pursuant to and in accordance with the consent of all owners (or such lesser number of owners as may then be prescribed by the Condominium Act for the purpose of altering the percentage shares of undivided interest of the owners in the Common Elements) expressed in a duly recorded amendment to this Declaration. In the event that such an amendment shall not be recorded within 90 days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided elsewhere herein whereupon the development may be terminated in the manner herein prescribed.

C. **Common Elements.** If part of the Common Elements is acquired by eminent domain, the award shall be paid to the Owners Association. The Owners Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit Owners in proportion to their respective Common Element interests before the taking, but the portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

XXI. RIGHTS OF DEVELOPER TO SELL OR LEASE UNITS.

So long as Developer, or any Mortgagee succeeding Developer in title, shall own any Unit, it shall have the absolute right to lease or sell any such Unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interests.

XXII. RIGHTS OF MORTGAGEES.

Any Mortgagee of a Condominium Unit who makes a request in writing to the Owners Association for the items provided in this section shall have the following rights:

- A. To be furnished with at least one (1) copy of the annual financial statement and report of the Owners Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished within sixty (60) days following the end of each fiscal year.
- B. To be given written notice by the Owners Association of the call of a meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of Owners Association, which notices shall state the nature of the amendment being proposed.
- C. To be given notice of default by any member owning any Unit encumbered by a mortgage held by such Mortgagee of the Unit Owner's obligations under this Declaration which is not cured within thirty (30) days, such notice to be given in writing and to be sent to the principal office of such Mortgagee or to the place which it or they may designate in writing to the Owners Association.
- D. To be given an endorsement to the insurance policies covering the Common Elements requiring that such Mortgagee be given any notice of cancellation provided for in such policy.
- E. Mortgagees shall have the right to examine the books and records of the Owners Association upon reasonable notice during ordinary working hours.

XXIII. MISCELLANEOUS.

A. **Security Disclaimer.** NEITHER THE ASSOCIATION, DEVELOPER OR THEIR RESPECTIVE OFFICERS, BOARDS OF DIRECTORS, EMPLOYEES, AGENTS, OR SUCCESSORS SHALL IN ANY MANNER BE DEEMED TO BE INSURERS OR GUARANTORS OF SECURITY WITHIN THE CONDOMINIUM PROPERTY. NEITHER THE ASSOCIATION, THE DEVELOPER OR SUCCESSORS SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE THE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

EACH OWNER AND OCCUPANT OF ANY UNIT, AND THEIR RESPECTIVE GUESTS, TENANTS, AND INVITEES, AS APPLICABLE, ACKNOWLEDGES AND

UNDERSTANDS THAT THE ASSOCIATION, DEVELOPER, THEIR BOARDS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, SUCCESSORS AND DESIGNEES ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT AND THEIR g RESPECTIVE GUESTS, TENANTS AND INVITEES ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND IMPROVEMENTS THEREON AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THEIR BOARDS OF DIRECTORS, OFFICERS, DEVELOPER, DESIGNEES AND SUCCESSORS, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER OR OCCUPANT, OR THEIR RESPECTIVE GUESTS, TENANTS OR INVITEES, RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY LIFE SAFETY SYSTEM, FIRE PROTECTION SYSTEM, EMERGENCY CALL SYSTEM, BURGLAR ALARM, CONTROLLED ACCESS GATE, OR OTHER SECURITY SYSTEMS RECOMMENDED OR COMMENDED OR INSTALLED FOR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY INCLUDING THE CONDOMINIUM PROPERTY. EACH OWNER AND OCCUPANT OF ANY UNIT AND THEIR RESPECTIVE GUESTS, TENANTS AND INVITEES ACKNOWLEDGES AND UNDERSTANDS THAT MARBELLA, A CONDOMINIUM IS WITHIN THE JURISDICTIONAL LIMITS OF DUVAL COUNTY, FLORIDA AND SERVICED BY THE SHERIFF'S DEPARTMENT OF DUVAL COUNTY WHO WILL BE RESPONSIBLE FOR THE SAFETY OF THE OWNERS AND ALL OCCUPANTS OF UNITS. ALL OWNERS ARE ADVISED TO NOTIFY THE SHERIFF'S DEPARTMENT OF DUVAL COUNTY OF ANY AND ALL HOME, SAFETY AND PROPERTY EMERGENCIES IN MARBELLA, A CONDOMINIUM.

B. Rights to the St. John's River Water Management District. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Or Stormwater Management System. Any amendment to the Declaration which alters any provision relating to the Surface Water Or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

C. Severability. The invalidity in whole or in part of any covenant or restriction, or any Article, subarticle, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and regulations of the Owners Association shall not affect the validity of the remaining portions thereof.

D. Applicability of Declaration of Condominium. All present or future owners, tenants, or any other person who might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration, and the mere acquisition or rental of any Unit, or mere act of occupancy of any Unit, shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

E. Construction. The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. The Florida

Condominium Act as amended to the date hereof is hereby adopted and made a part hereof. In the event of any conflict between the provisions of this Declaration and the Condominium Act, the provisions of the Condominium Act shall prevail.

F. Parties Bound. The restrictions and burdens imposed by this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Elements and this Declaration shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Developer has caused the foregoing Declaration of Condominium to be executed, and its corporate seal to be affixed, by its duly authorized officer on the date set forth above.

SOFRAN MARBELLA, LTD.,
a Florida limited partnership

By: The Sofran Corporation,
Its general partner

By: [Signature]
Robert Rouleau
Its President

[Signature]
Print Name Susan L. Best

[Signature]
Print Name: Fabio Fasaneli

(CORPORATE SEAL)

STATE OF FLORIDA)
) ss
COUNTY OF DUVAL)

The foregoing Declaration of Condominium was acknowledged before me this 12th day of January, 2005, by Robert Rouleau, the President of The Sofran Corporation, as general partner of Sofran Marbella, Ltd., a Florida limited partnership, who is personally known to me or who has produced N.A. as identification.

[Signature]
Notary Public, State of Florida

Name: Caroline S. Yates
My Commission Expires: 11-6-08
My Commission Number is: DD 352754



JOINDER AND CONSENT

The undersigned, being the owner and holder of that certain mortgage recorded in Official Records Book 10674, page 2199, of the public records of Duval County, Florida, joins in and consents to the foregoing Declaration of Condominium of Marbella, a Condominium, to evidence its consent to and joinder in the provisions hereof, and its intent that its security interest be subordinate and inferior to this Declaration of Condominium.

BANK OF AMERICA, N.A.

By: Brent L Farnham
Printed Brent L Farnham
Its Senior Vice President

STATE OF Georgia
COUNTY OF Fulton

The foregoing instrument was acknowledged before me this Jan. 27, 2005, by Brent L Farnham, as Sr. Vice Pres, on behalf of Bank of America, N.A., a national banking association. He/she is [] personally known to me or [] produced _____ as identification.

John C. Martin
Notary Public, State and County aforesaid
Commission number:
My commission expires: 9-1-2007

EXHIBIT "A"
Legal Description of Land

Lots 1 through 4, Block 91, Pablo Beach South, as recorded in Plat Book 3, pages 28 of the public records of Duval County, Florida, together with all of the land lying east of and between the easterly projection of the northerly boundary line of Lot 1 and the southerly boundary line of Lot 4 to the erosion control line as recorded in Plat Book 35, pages 59, 59A and 59B of said current public records.

EXHIBIT "B"

Page 1 of 3

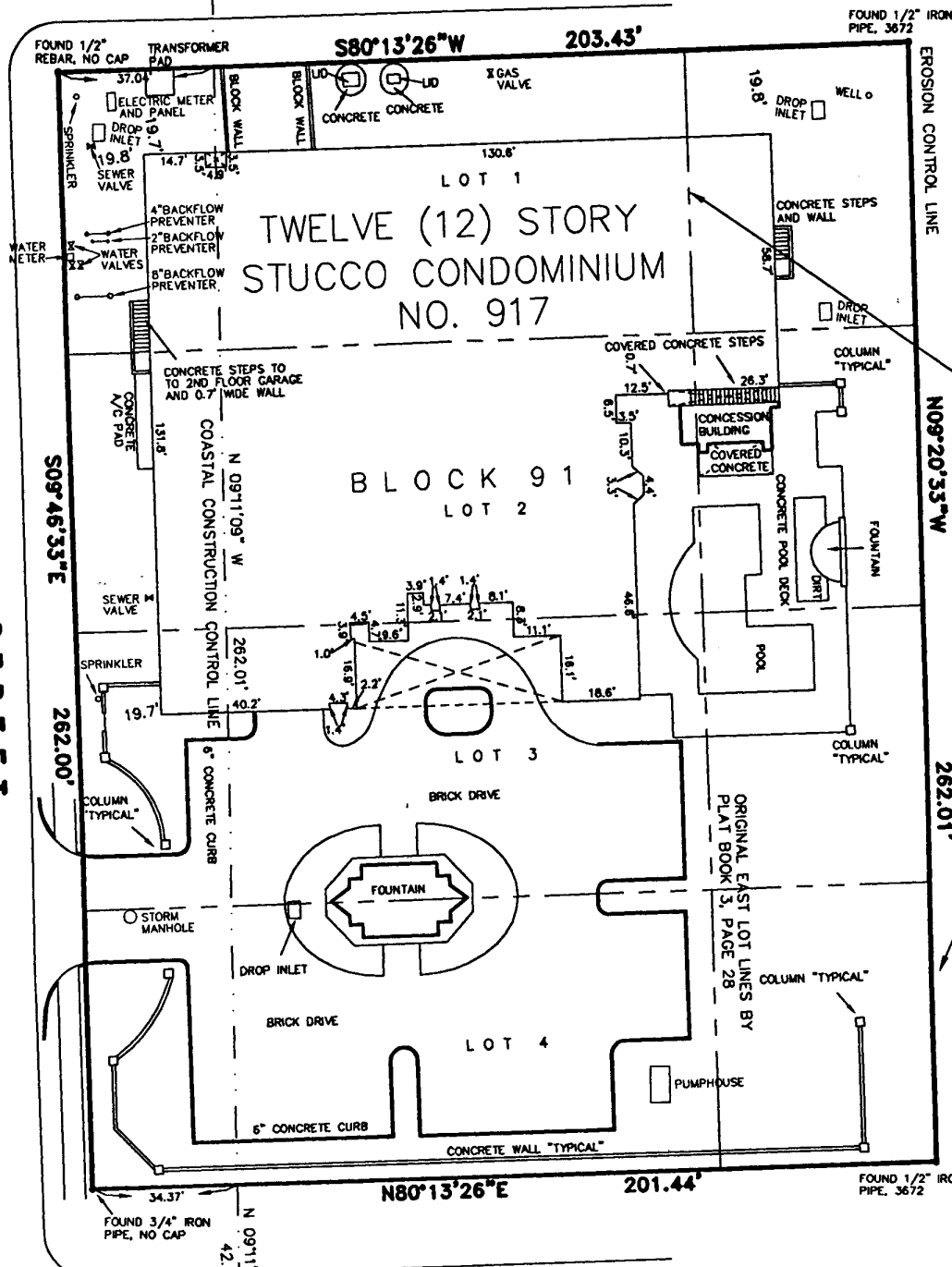
MAP SHOWING SURVEY OF

LOTS 1 THROUGH 4, BLOCK 91, PABLO BEACH SOUTH AS RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

FOUND DEPARTMENT OF NATURAL RESOURCES MONUMENT 72-81-A28 NORTHING: 2163599.2 EASTING: 377203.7

NINTH (9TH) AVENUE SOUTH

(FORMERLY GADSDEN AVENUE)
80' RIGHT-OF-WAY



TWELVE (12) STORY STUCCO CONDOMINIUM NO. 917

BLOCK 91

ATLANTIC OCEAN

PART OF OCEAN BOULEVARD
BY PLAT BOOK 3, PAGE 28 AS CLOSED
BY CITY OF JACKSONVILLE BEACH ORDINANCE NO. 1123

TENTH (10TH) AVENUE SOUTH

80' RIGHT-OF-WAY

NOTES:

1.) SEE SHEET 2 OF 2 FOR GENERAL NOTES.



NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

CHECKED BY: _____
DRAWN BY: DAF
FILE #: 2005-0153

BOATWRIGHT LAND SURVEYORS, INC.
1500 ROBERTS DRIVE
JACKSONVILLE BEACH, FLORIDA 241-8550

DATE: MARCH 8, 2005
SHEET 1 OF 2

EXHIBIT "B"

Page 2 of 3

MAP SHOWING SURVEY OF

LOTS 1 THROUGH 4, BLOCK 91, PABLO BEACH SOUTH AS RECORDED IN PLAT BOOK 3, PAGE 28 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

NOTES:

1.) THE BEARINGS SHOWN HEREON ARE BASED ON THE LINE CONNECTING MONUMENT A-29 TO MONUMENT A-28 AS BEING: N.10°45'36"W AS PER BOATWRIGHT LAND SURVEYORS DRAWING NUMBER 2002-0051, DATED JANUARY 18, 2002.

2.) THE EROSION CONTROL LINE SHOWN HEREON AS RECORDED IN PLAT BOOK 35, PAGES 59, 59A & 59B OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, WAS ESTABLISHED AS THE SEAWARD BOUNDARY OF ALL OCEANFRONT PROPERTY IN DUVAL COUNTY BY FLORIDA STATUTES CHAPTER 161.191.

3.) THIS PROPERTY APPEARS TO LIE IN FLOOD ZONE "AO" WHICH IS THE 100 YEAR FLOOD ZONE WITH AN AVERAGE DEPTH OF 2 FEET AND ALSO IN FLOOD ZONE "X" WHICH IS OUTSIDE THE 500 YEAR FLOOD, BY FLOOD MAPS REVISED 4/17/89 COMMUNITY PANEL NO. 120078 0002 D.

4.) NO BUILDING RESTRICTION LINE BY PLAT, BUT THERE MAY BE RESTRICTION LINES OR EASEMENTS THAT AFFECT THIS PROPERTY BY ZONING OR RECORDED IN THE PUBLIC RECORDS OF THIS COUNTY THAT ARE NOT SHOWN ON THIS SURVEY.

THIS SURVEY MADE IN ACCORDANCE WITH THE MINIMUM TECHNICAL STANDARDS OF FLORIDA STATUTES 61G17-6.

[Handwritten Signature]

DONN W. BOATWRIGHT, P.S.M.
FLA. LIC. SURVEYOR AND MAPPER No. LS 3295
FLA. LIC. SURVEYING & MAPPING BUSINESS No. LB 3672

"NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER."

CHECKED BY: _____
DRAWN BY: DAF
FILE #: 2005-0153

BOATWRIGHT LAND SURVEYORS, INC.
1500 ROBERTS DRIVE
JACKSONVILLE BEACH, FLORIDA 241-8550

DATE: MARCH 8, 2005
SHEET 2 OF 2

EXHIBIT "B"

Page 3 of 3

Surveyor's Certification

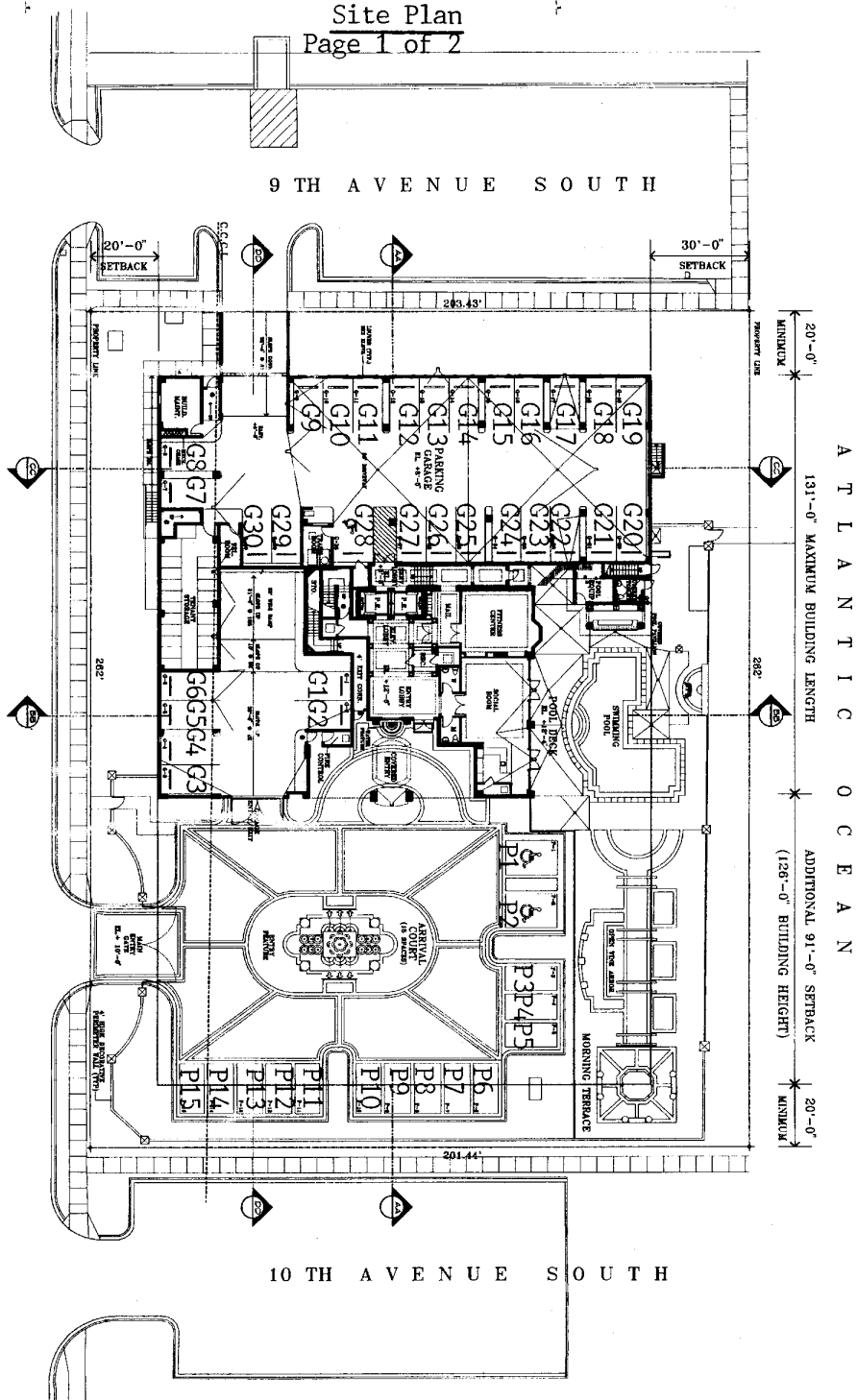
This is to certify that the construction of the improvements in Marbella, a Condominium is substantially complete so that this material, together with the provisions of the Declaration describing the Condominiums Property and Exhibits A, B, B-2 and C are an accurate representation of the location and dimensions of the improvements so that the Common Elements and each Unit can be determined from these materials.



Donn W. Boatwright, P.S.M.
Florida Licensed Surveyor & Mapper, No. LS 3295
Florida Licensed Surveying & Mapping Business,
No. LB 3672



EXHIBIT "B-2"
Site Plan
Page 1 of 2



GROUND LEVEL SITE PLAN
(ELEV. +8'-5" / +12'-6")

ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.
ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

DATE	03-26-02
SCALE	1/8" = 1'-0"
PROJECT	716
NO.	216
DATE	03-26-02
SCALE	1/8" = 1'-0"
PROJECT	716
NO.	216

ROBERT M. SWEDROE
ARCHITECTS PLANNERS
1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
PHONE 573-6002 ALA P.A.



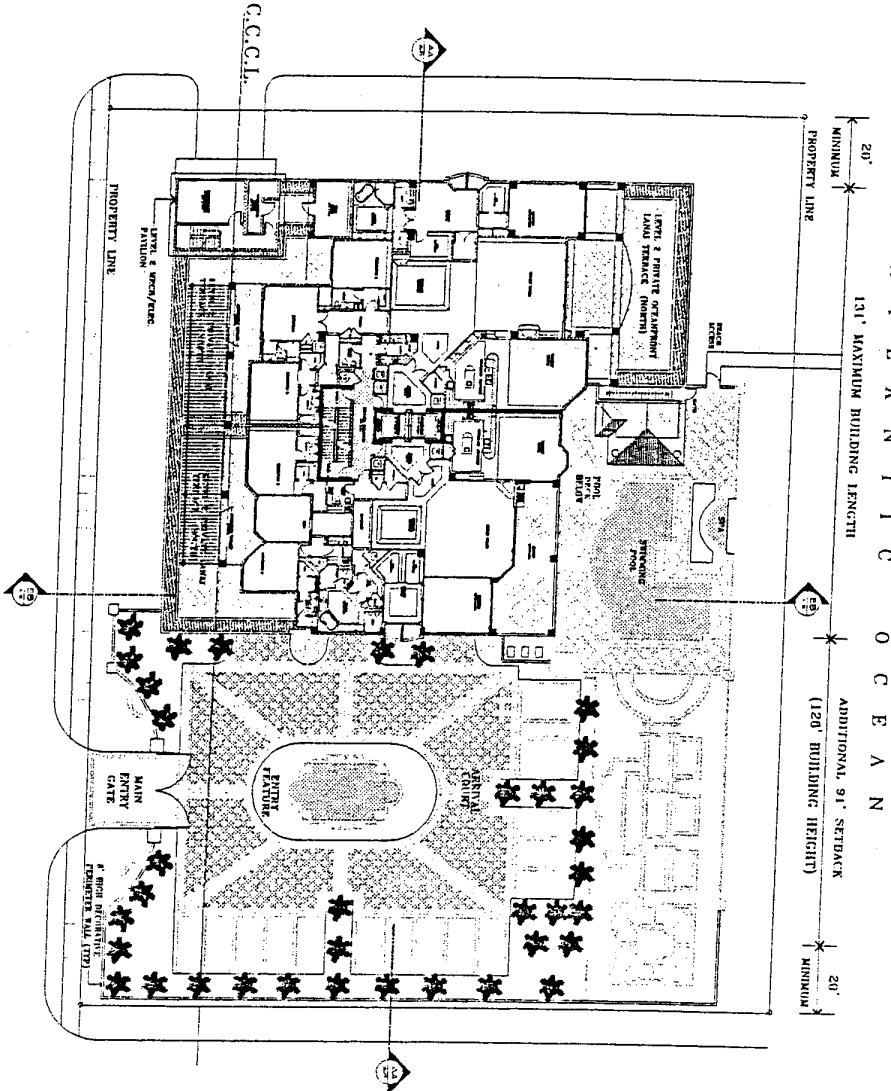
MARBELLA
LUXURY CONDOMINIUM RESIDENCES
JACKSONVILLE BEACH, FLORIDA

REVISION	DATE

EXHIBIT B-2
SITE PLAN

Page 2 of 2

9TH AVENUE SOUTH



10TH AVENUE SOUTH

LANAI LEVEL SITE PLAN
(ELEV. +22'-0")



DATE	07/25/07
SCALE	1/8" = 1'-0"
PROJECT	LANAI LEVEL
NO.	A-08

ROBERT M. SWEDROE
ARCHITECTS PLANNERS
1111 LINCOLN ROAD SUITE 100 MIAMI BEACH, FL 33139
PHONE 573-3002 A.I.A. P.A.

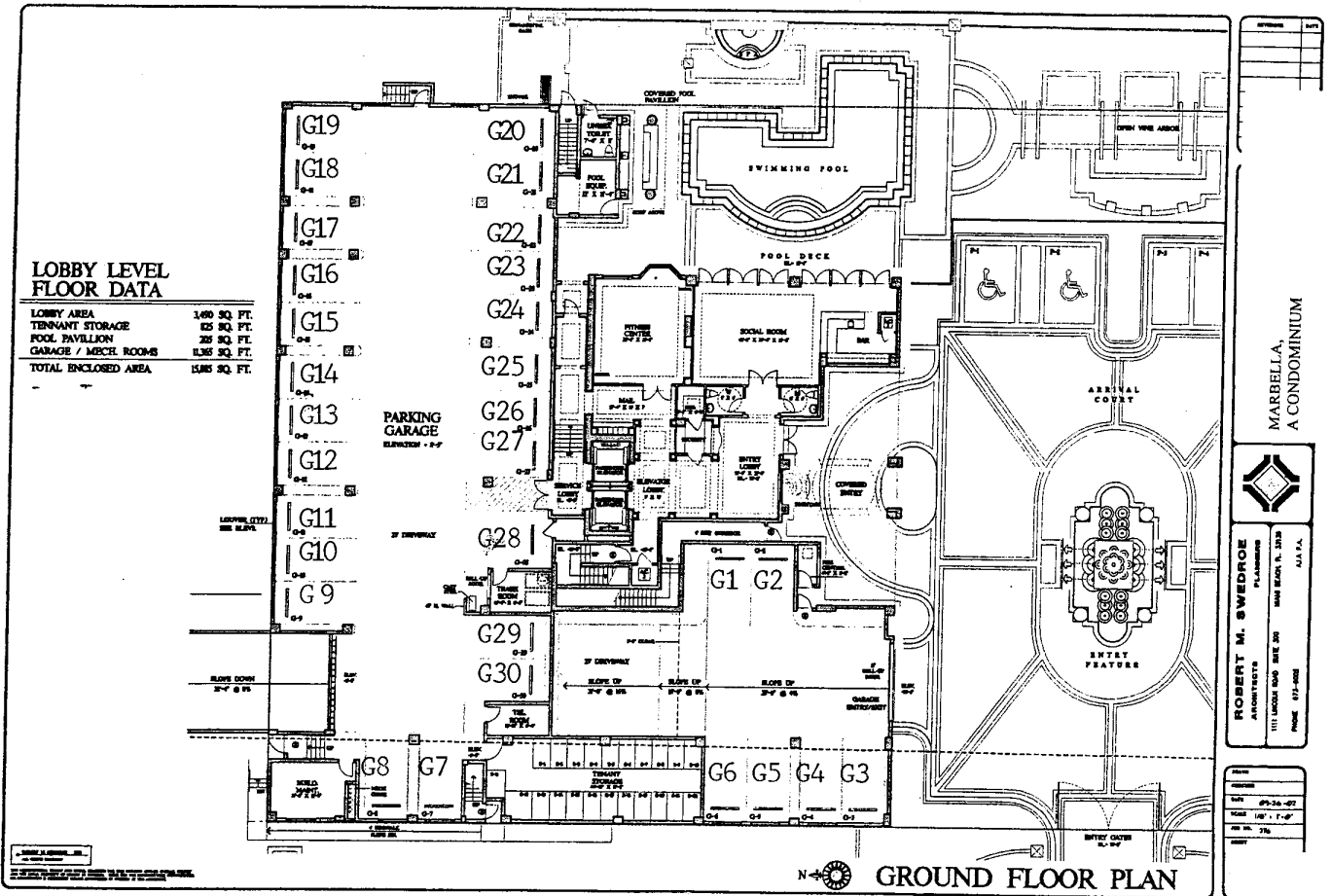


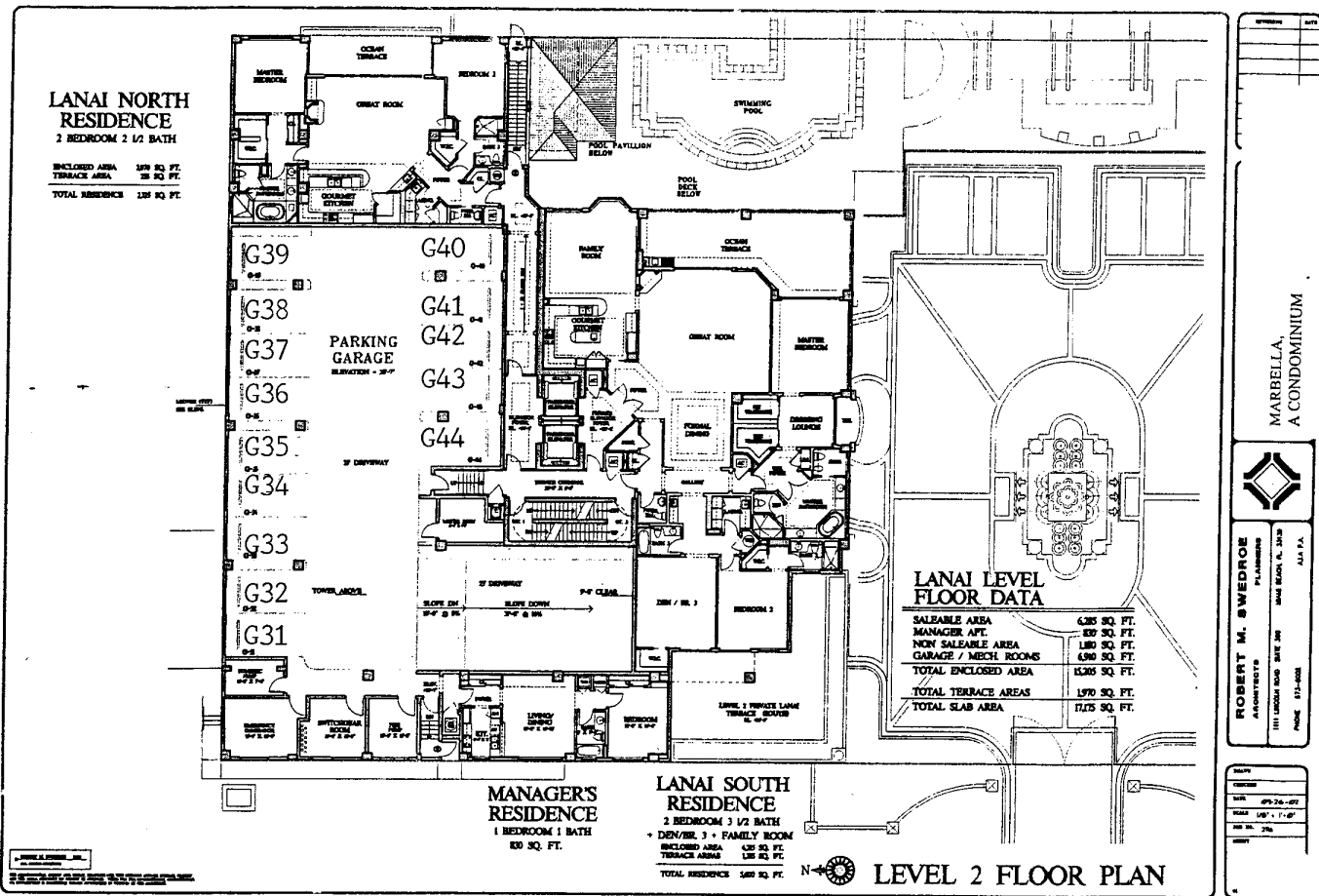
MARBELLA
LUXURY CONDOMINIUM RESIDENCES
JACKSONVILLE BEACH, FLORIDA

REVISIONS	
NO.	DESCRIPTION

EXHIBIT "C"

Graphic Depiction of the Improvements



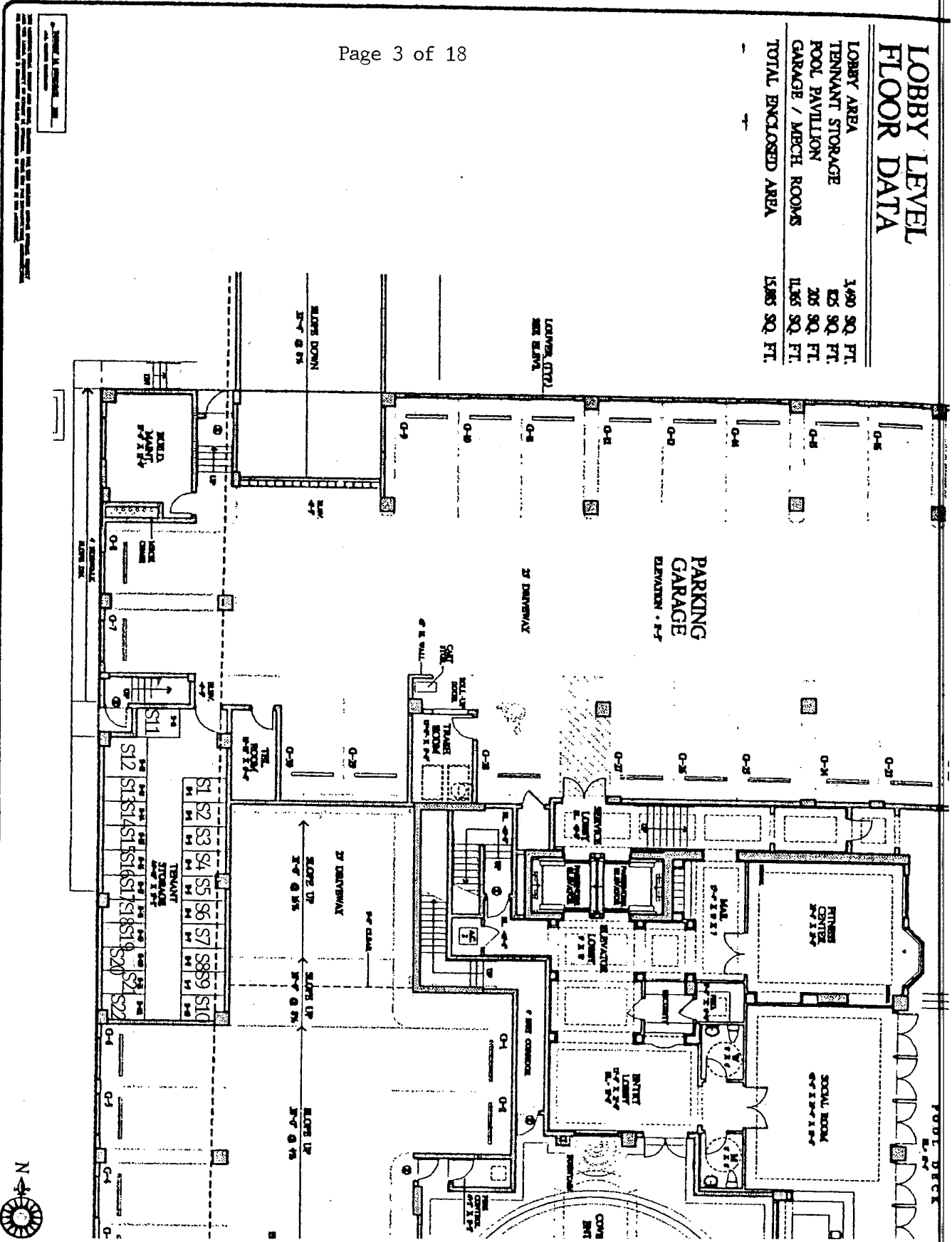


TENANT STORAGE AREAS
ENLARGED TO SHOW DETAIL

Page 3 of 18

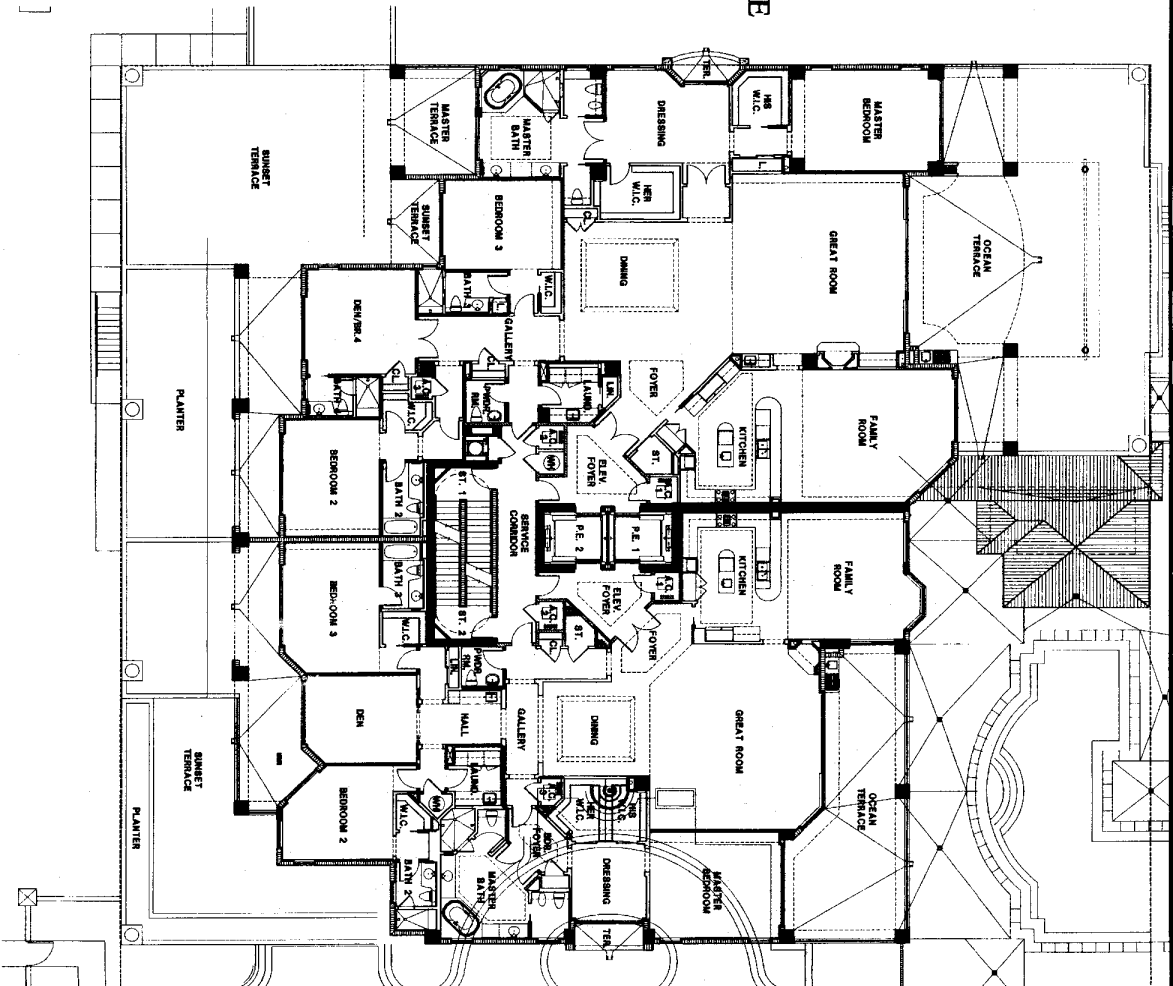
LOBBY LEVEL
FLOOR DATA

LOBBY AREA	1,490 SQ. FT.
TENANT STORAGE	825 SQ. FT.
POOL PAVILION	205 SQ. FT.
GARAGE / MECH ROOMS	1,263 SQ. FT.
TOTAL ENCLOSED AREA	3,783 SQ. FT.



GENERAL NOTES:
1. REFER TO SHEET 106 FOR GENERAL NOTES.
2. REFER TO SHEET 107 FOR GENERAL NOTES.
3. REFER TO SHEET 108 FOR GENERAL NOTES.
4. REFER TO SHEET 109 FOR GENERAL NOTES.
5. REFER TO SHEET 110 FOR GENERAL NOTES.
6. REFER TO SHEET 111 FOR GENERAL NOTES.
7. REFER TO SHEET 112 FOR GENERAL NOTES.
8. REFER TO SHEET 113 FOR GENERAL NOTES.
9. REFER TO SHEET 114 FOR GENERAL NOTES.
10. REFER TO SHEET 115 FOR GENERAL NOTES.

NORTH RESIDENCE
 3 BEDROOM 4 1/2 BATH
 + DEN/BR.4 + FAMILY ROOM
 ENCLOSED AREA 535 SQ. FT.
 TERRACE AREAS 376 SQ. FT.
 TOTAL RESIDENCE 910 SQ. FT.



SOUTH RESIDENCE
 3 BEDROOM 3 1/2 BATH
 + DEN + FAMILY ROOM
 ENCLOSED AREA 485 SQ. FT.
 TERRACE AREAS 190 SQ. FT.
 TOTAL RESIDENCE 675 SQ. FT.

THIRD LEVEL FLOOR DATA
 SALEABLE AREA 9,750 SQ. FT.
 NON SALEABLE AREA 540 SQ. FT.
 TOTAL ENCLOSED AREA 10,290 SQ. FT.
 TOTAL TERRACE AREAS 5,175 SQ. FT.
 PLANTER 675 SQ. FT.
 TOTAL SLAB AREA 10,965 SQ. FT.

N

LEVEL 3 FLOOR PLAN

DATE	03-16-07
SCALE	1/8" = 1'-0"
JOB NO.	216
REVISION	
DRW	
CHECKED	
DATE	
SCALE	
JOB NO.	
REVISION	

ROBERT M. SWEDROE
 ARCHITECTS PLANNERS
 1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
 PHONE 673-8002 A.I.A. P.A.



MARBELLA
 LUXURY CONDOMINIUM RESIDENCES
 JACKSONVILLE BEACH, FLORIDA

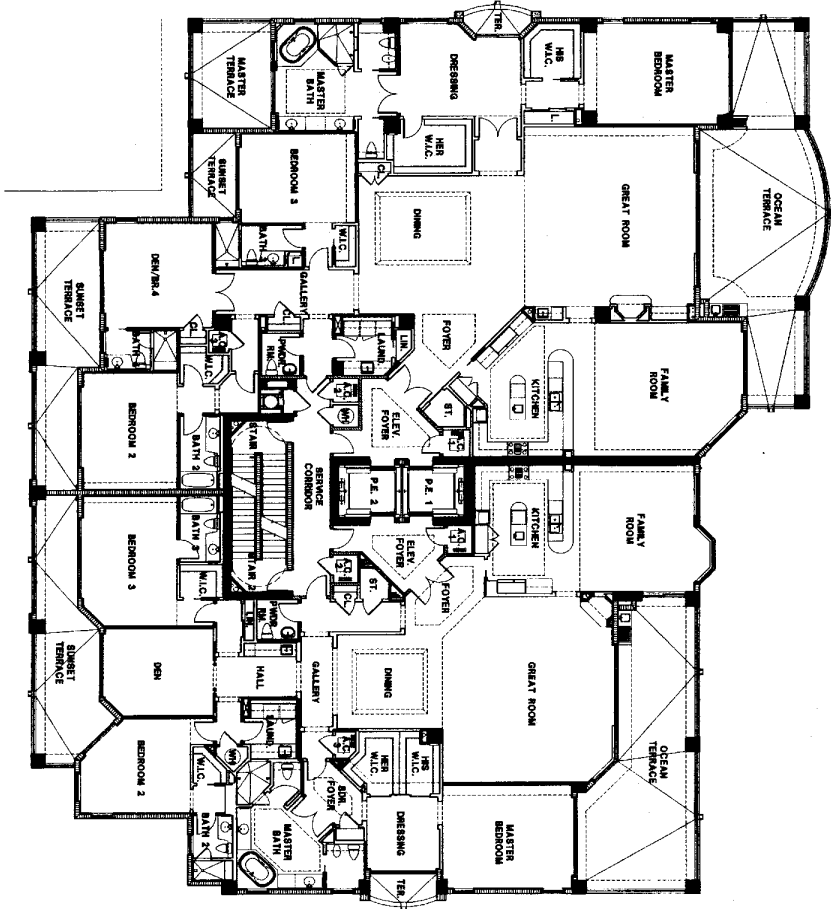
REVISION	
DATE	
REVISION	
DATE	

NORTH RESIDENCE

3 BEDROOM 4 1/2 BATH
 + DEN/WR.4 + FAMILY ROOM
 ENCLOSED AREA 538 SQ. FT.
 TERRACE AREAS 1,470 SQ. FT.
 TOTAL RESIDENCE 6,785 SQ. FT.

SOUTH RESIDENCE

3 BEDROOM 3 1/2 BATH
 + DEN + FAMILY ROOM
 ENCLOSED AREA 448 SQ. FT.
 TERRACE AREAS 1,000 SQ. FT.
 TOTAL RESIDENCE 5,448 SQ. FT.



TYPICAL FLOOR DATA

SALEABLE AREA	9,790 SQ. FT.
NON SALEABLE AREA	640 SQ. FT.
TOTAL ENCLOSED AREA	10,430 SQ. FT.
TOTAL TERRACE AREAS	2,480 SQ. FT.
TOTAL SLAB AREA	12,910 SQ. FT.

N  **TYPICAL FLOOR PLAN**

ALL RIGHTS RESERVED. THIS PLAN IS THE PROPERTY OF ROBERT M. SWEDROE ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND PHASE SPECIFICALLY IDENTIFIED HEREON. ANY REPRODUCTION OR TRANSMISSION IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ROBERT M. SWEDROE ARCHITECTS IS PROHIBITED.

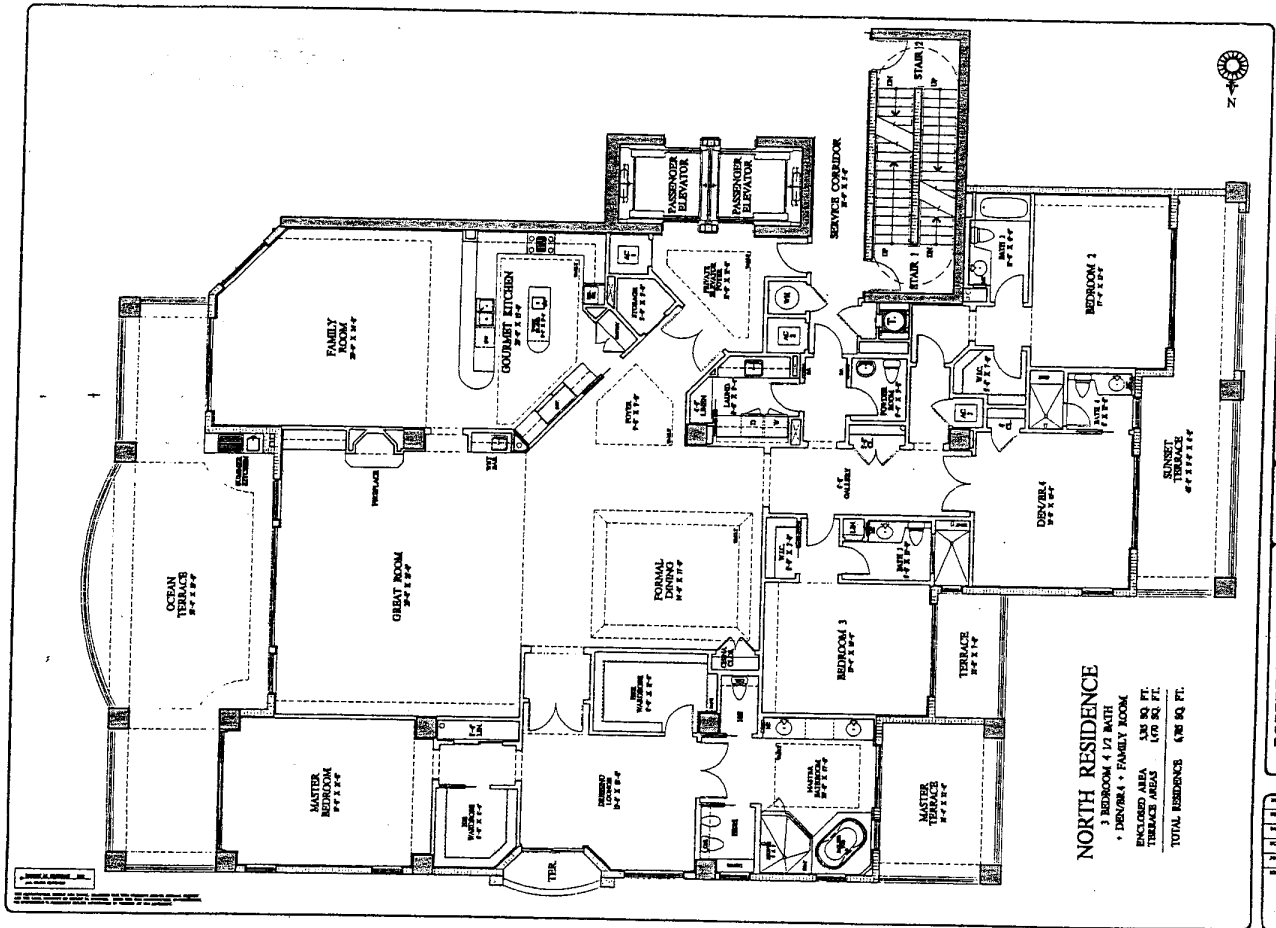
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PROJECT	
NO. NO.	216
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ROBERT M. SWEDROE
 ARCHITECTS PLANNERS
 1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
 PHONE 673-8002 A.L.A. P.A.



MARBELLA
 LUXURY CONDOMINIUM RESIDENCES
 JACKSONVILLE BEACH, FLORIDA

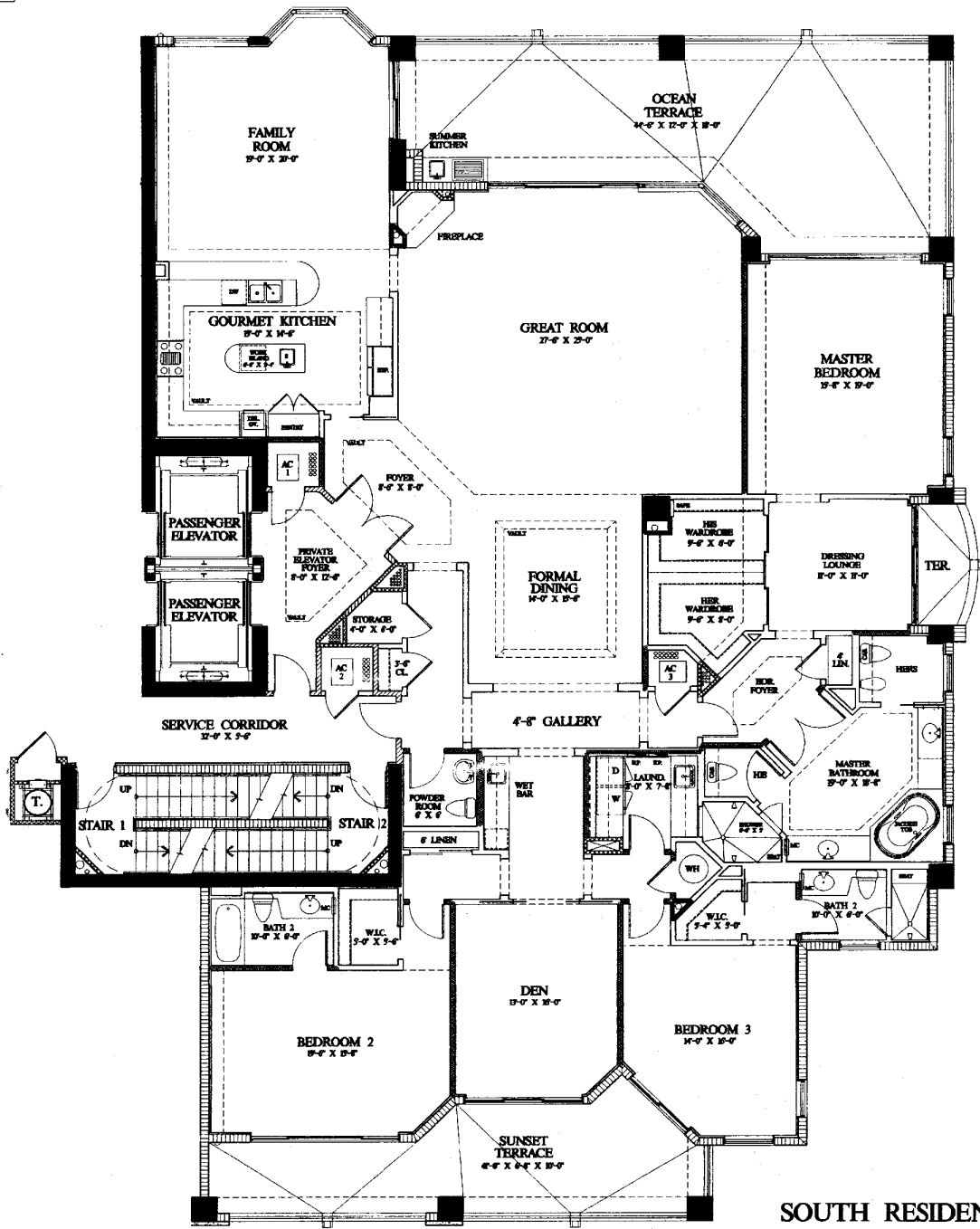
REVISIONS	DATE



NORTH RESIDENCE
 3 BEDROOM 4 1/2 BATH
 + DINING + FAMILY ROOM
 ENCLOSED AREA 335 SQ. FT.
 TERRACE AREA 179 SQ. FT.
 TOTAL RESIDENCE 514 SQ. FT.

ROBERT M. SWEDROE
 ARCHITECTS
 1111 LINDA ROAD SUITE 200
 MIAMI BEACH, FL 33139
 PHONE 978-9000
 FLA. P.A.

MARBELLA
 A CONDOMINIUM



SOUTH RESIDENCE

3 BEDROOM 3 1/2 BATH
+ DEN + FAMILY ROOM

ENCLOSED AREA 4,435 SQ. FT.
TERRACE AREAS 1,080 SQ. FT.

TOTAL RESIDENCE 5,515 SQ. FT.



NO.	DATE	BY	CHKD.
1	09-16-07	RSW	RSW
2	10-18-07	RSW	RSW
3	11-14-07	RSW	RSW
4	12-11-07	RSW	RSW
5	01-10-08	RSW	RSW
6	02-14-08	RSW	RSW
7	03-13-08	RSW	RSW
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9	05-08-08	RSW	RSW
10	06-05-08	RSW	RSW
11	07-03-08	RSW	RSW
12	08-01-08	RSW	RSW
13	08-29-08	RSW	RSW
14	09-26-08	RSW	RSW
15	10-24-08	RSW	RSW
16	11-21-08	RSW	RSW
17	12-19-08	RSW	RSW
18	01-16-09	RSW	RSW
19	02-13-09	RSW	RSW
20	03-12-09	RSW	RSW
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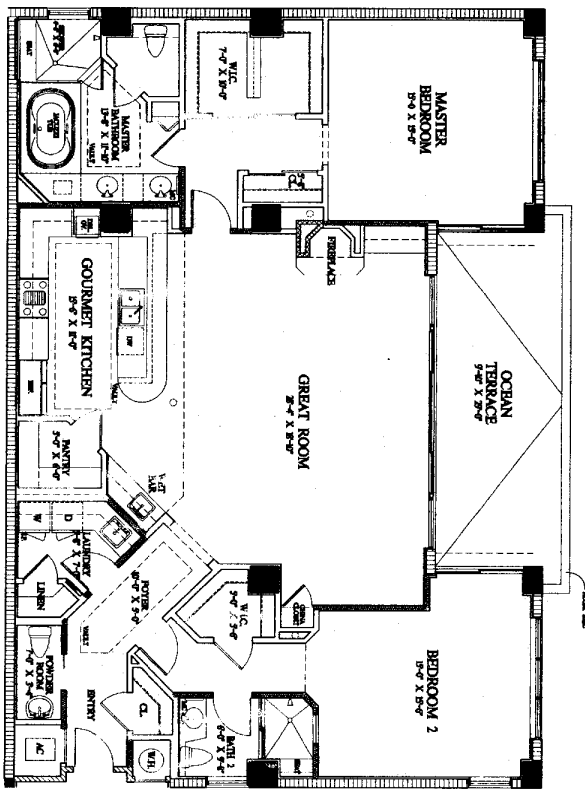
ROBERT M. SWEDROE
ARCHITECTS PLANNERS
1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
PHONE 673-6002 AIA P.A.



MARBELLA
LUXURY CONDOMINIUM RESIDENCES
JACKSONVILLE BEACH, FLORIDA

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**LANAI NORTH
 RESIDENCE**
 2 BEDROOM 2 1/2 BATH
 ENCLOSED AREA 2,600 SQ. FT.
 TERRACES AREA 255 SQ. FT.
 TOTAL RESIDENCE 2,855 SQ. FT.



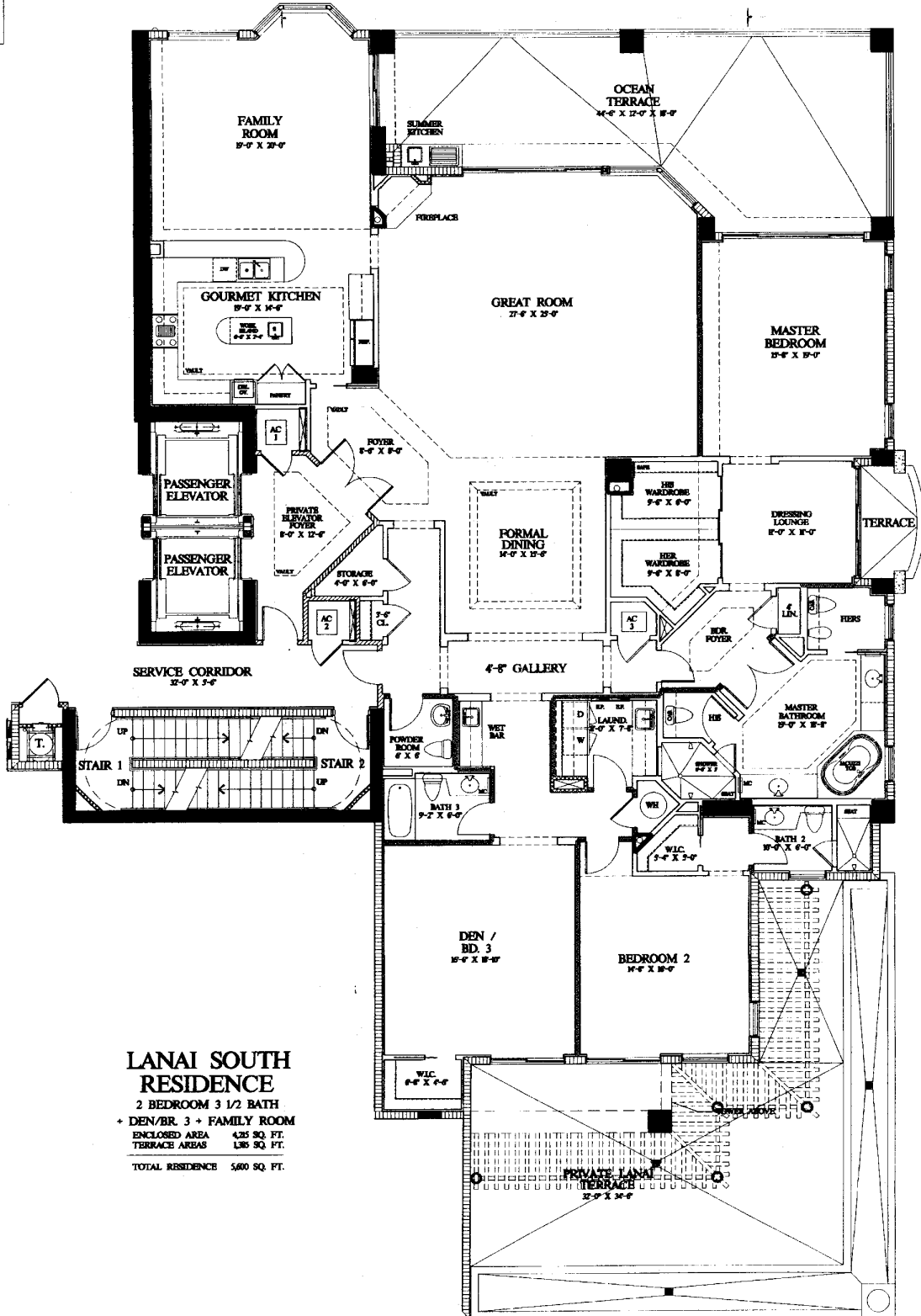
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REVISION	

ROBERT M. SWEDROE
 ARCHITECTS PLANNERS
 1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL. 33139
 PHONE 675-6002 A.L.A. P.A.



MARBELLA
 LUXURY CONDOMINIUM RESIDENCES
 JACKSONVILLE BEACH, FLORIDA

DATE	
REVISION	



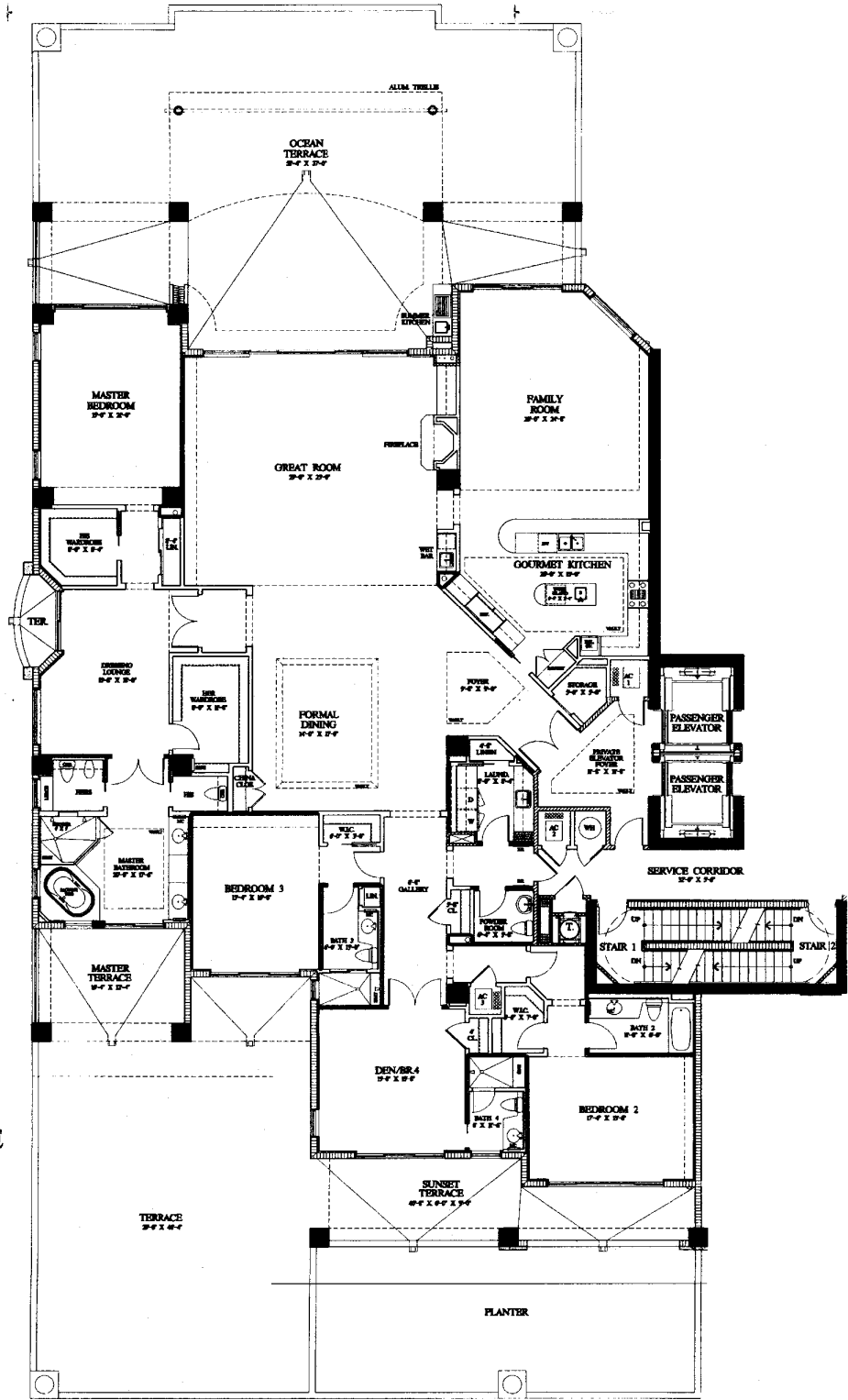
LANAI SOUTH RESIDENCE
 2 BEDROOM 3 1/2 BATH
 + DEN/BR. 3 + FAMILY ROOM
 ENCLOSED AREA 425 SQ. FT.
 TERRACE AREAS 135 SQ. FT.
 TOTAL RESIDENCE 560 SQ. FT.

NO.	REVISION	DATE

ROBERT M. SWEDROE
 ARCHITECTS PLANNERS
 1111 LINCOLN ROAD SUITE 300 MAM BEACH, FL. 33130
 PHONE 675-6002 ALA. P.A.



MARBELLA
 LUXURY CONDOMINIUM RESIDENCES
 JACKSONVILLE BEACH, FLORIDA



**THRID LEVEL
NORTH RESIDENCE**

3 BEDROOM 4 1/2 BATH
+ DEN/BR.4 + FAMILY ROOM

ENCLOSED AREA 5,315 SQ. FT.
TERRACE AREAS 3,785 SQ. FT.

TOTAL RESIDENCE 9,100 SQ. FT.



DATE	2-15-07
CHECKED	
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SHEET	

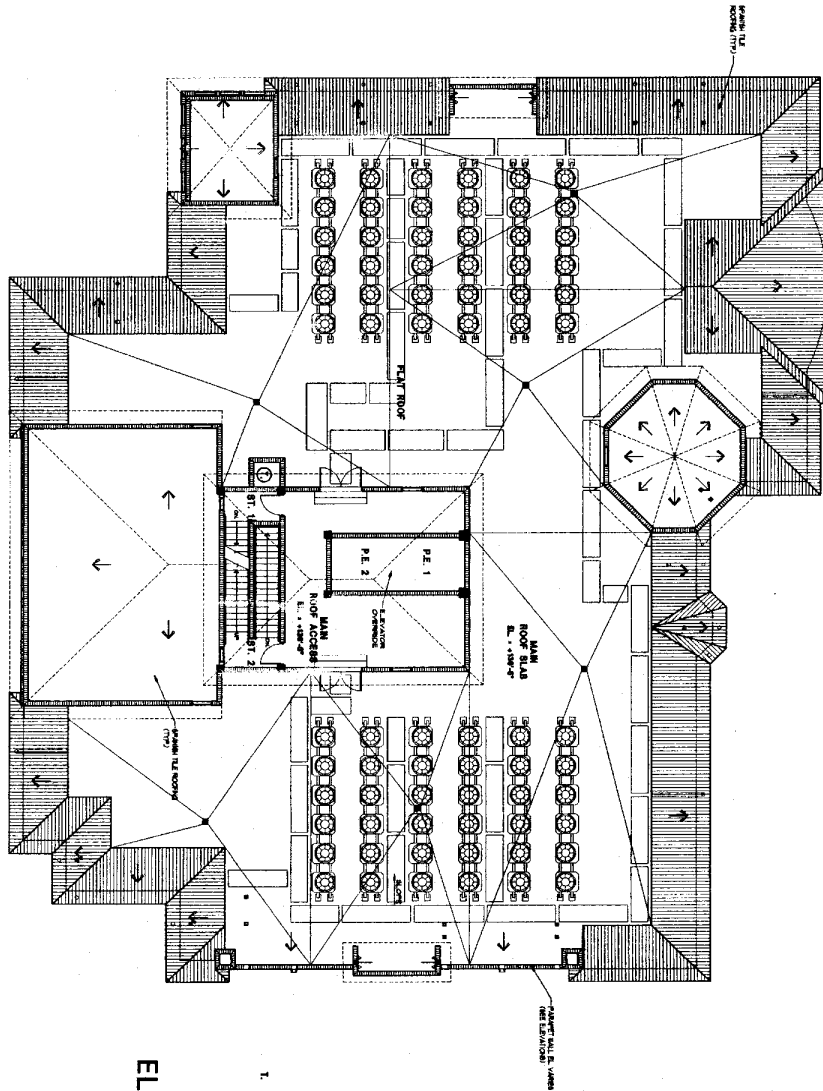
ROBERT M. SWEDROE
ARCHITECTS PLANNERS

1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
PHONE 673-8002 ALA. P.A.

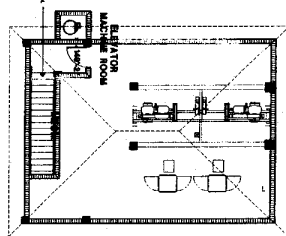


MARBELLA
LUXURY CONDOMINIUM RESIDENCES
JACKSONVILLE BEACH, FLORIDA

MAIN ROOF LEVEL



ELEV. MACH. RM.



ROOF PLAN

THIS PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE ARCHITECT'S OFFICE SHALL NOT BE RESPONSIBLE FOR THE OMISSION OF ANY NECESSARY DETAILS OR FOR THE CONSTRUCTION OF THE PROJECT.

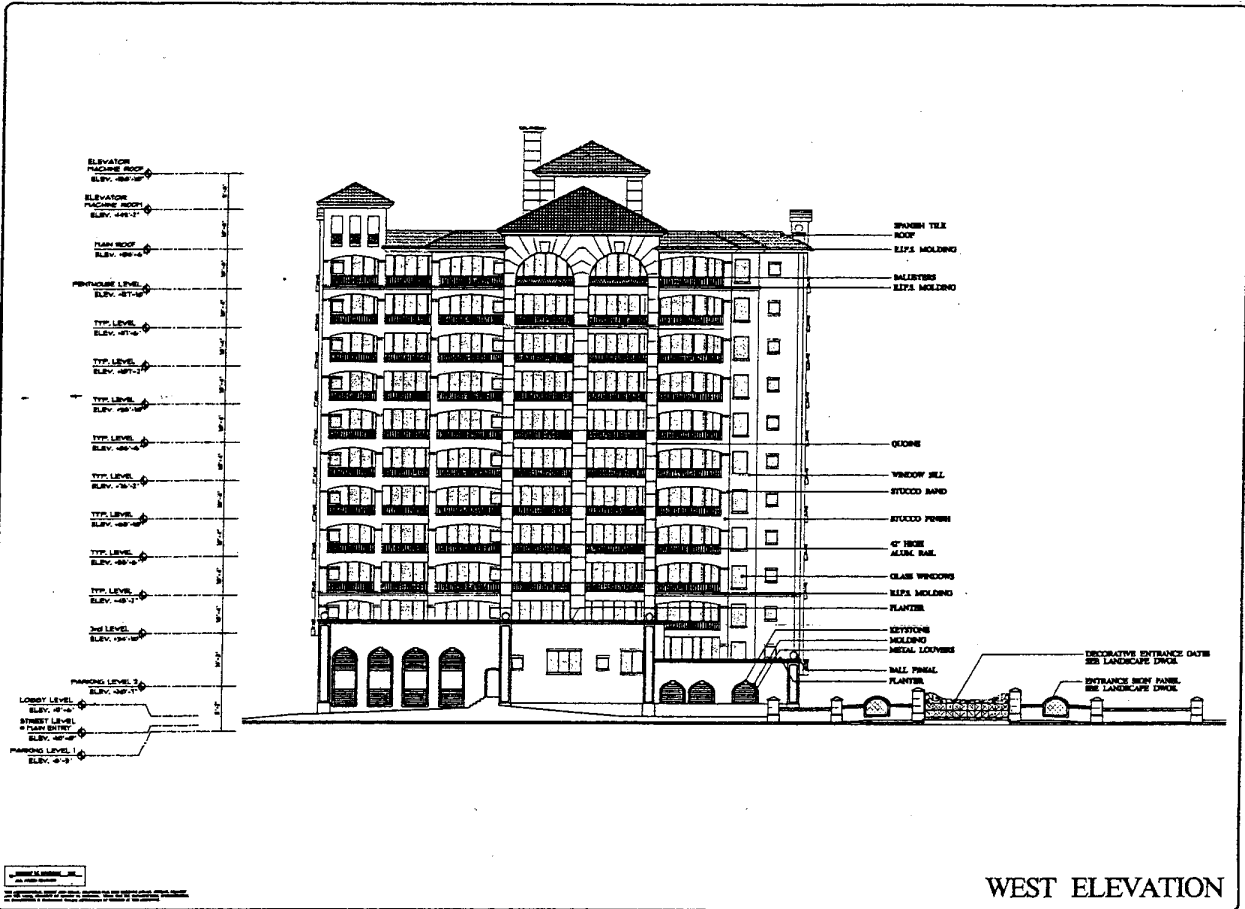
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PROJECT	216
REVISION	

ROBERT M. SWEDROE
 ARCHITECTS PLANNERS
 1111 LINCOLN ROAD SUITE 300 MIAMI BEACH, FL 33139
 PHONE 675-6002 A.L.A. P.A.



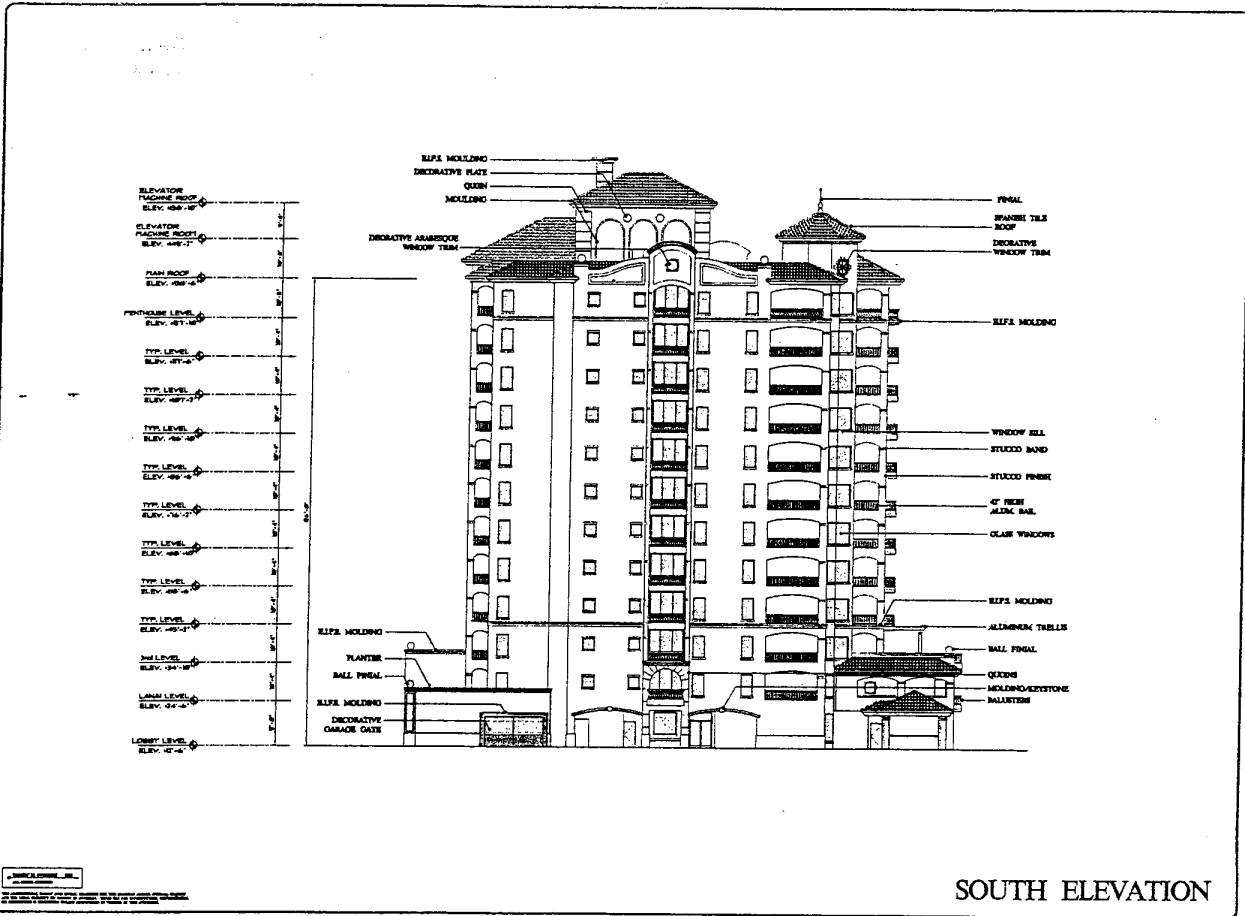
MARBELLA
 LUXURY CONDOMINIUM RESIDENCES
 JACKSONVILLE BEACH, FLORIDA

NO.	DATE	DESCRIPTION



DATE	BY
MARBELLA, A CONDOMINIUM	
	
ROBERT M. SWEDROE ARCHITECT 1711 LINDALE ROAD, SUITE 300 MIAMI BEACH, FL 33139 PHONE: 305-438-8888	

DATE	BY
09-28-07	
SCALE	3/8" = 1'-0"
NO. IN SET	26



NO.	DATE	DESCRIPTION

MARBELLA,
A CONDOMINIUM



ROBERT M. SWEDROE
ARCHITECT
1111 LINDSEY ROAD, SUITE 200
LANE MARK, PA. 19048
PHONE: 610-338-1111
JULY 2008

NO.	DATE	DESCRIPTION

SOUTH ELEVATION

EXHIBIT "D"

**ARTICLES OF INCORPORATION
OF
MARBELLA OWNERS ASSOCIATION, INC.
A FLORIDA CORPORATION NOT-FOR-PROFIT**

We, the undersigned, being desirous of forming a corporation not for profit, do hereby associate ourselves into a corporation for the purposes and with the powers herein specified and do hereby agree to the following Articles of Incorporation.

ARTICLE I.

NAME

The name of this corporation shall be MARBELLA OWNERS ASSOCIATION, INC., (hereinafter referred to as the "Association").

ARTICLE II.

PURPOSE

The purposes and object of the Association shall be to administer the operation and management of Marbella, A Condominium (hereinafter "the Condominium") to be established by Sofran Marbella, Ltd., a Florida limited partnership (the "Developer") in accordance with the Florida Condominium Act, Chapter 718, Florida Statutes ("Condominium Act"), upon that certain real property in Duval County, Florida, as described on Exhibit "A" attached to the Declaration of Condominium of Marbella, A Condominium, and incorporated herein by reference.

The Association shall undertake and perform all acts and duties incident to the operation and management of the Condominium in accordance with the terms, provisions, and conditions of these Articles of Incorporation, the Bylaws of the Association and the Declaration of Condominium (the "Declaration") which will be recorded in the public records of Duval County, Florida, and the Condominium Act.

ARTICLE III.

POWERS

The Association shall have the following powers:

A. All of the powers and privileges granted to corporations not for profit under the laws of the State of Florida and under the Condominium Act, and the Declaration of Condominium.

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B. All of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, without limitation, the power, authority and right to:

1. Make and establish reasonable rules and regulations governing the use of the Units, Common Elements, and Limited Common Elements of the Condominium, as such terms will be defined in the Declaration.
2. Own, operate, lease, sell, manage, and otherwise deal with such real and personal property as may be necessary or convenient for the administration of the Condominium.
3. To own, manage, administer and operate such property as may be conveyed to it by the Developer, its successors or assigns for the mutual benefit and use of all members.
4. Levy and collect assessments against members of the Association to defray the Common Expenses of the Condominium, as will be provided in the Declaration and the Bylaws, including, without limitation, the right to levy and collect adequate assessments for the cost of maintenance and operation of the surface water or stormwater management system, the right to levy and collect assessments for the purpose of acquiring, owning, holding, operating, leasing, encumbering, selling, conveying, exchanging, managing and otherwise dealing with the Condominium Property, as such term is defined in the Declaration, including Units, which may be necessary or convenient in the operation and management of the Condominium and in accomplishing the purposes set forth in the Declaration.
5. Maintain, repair, replace, operate and manage the Condominium Property, and any property owned by the Association, including the right to reconstruct improvements after casualty and to further improve and add to the Condominium Property and other property owned by the Association.
6. Contract for the management of the Condominium and, in connection therewith, to delegate any and/or all of the powers and duties of the Association to the extent and in the manner permitted by the Declaration, the Bylaws, and the Condominium Act.
7. Enforce the provisions of these Articles of Incorporation, the Declaration, the Bylaws, and all Rules and Regulations and Covenants and Restrictions governing use of the Condominium which may hereafter be established.
8. Operate, maintain and manage the surface water or storm water management systems in a manner consistent with the St. Johns River Water Management District ("SJRWMD") Permit No. _____ requirements and applicable District rules, and shall assist in the

H05000036183

enforcement of the provisions in the Declaration of Condominium which relate to the surface water or stormwater management system.

ARTICLE IV.

QUALIFICATION OF MEMBERS

The qualifications of members, manner of their admission to and termination of membership and voting by members shall be as follows:

A. The owners of all Units in the Condominium shall be members of the Association, and no other persons or entities shall be entitled to membership, except the subscribers hereof.

B. A person shall become a Member by the acquisition of a vested present interest in the fee title to a Unit in the Condominium. The membership of any person or entity shall be automatically terminated upon his being divested of his title or interest in such Unit.

C. Transfer of membership shall be recognized by the Association upon its being provided with a copy of the recorded warranty deed for the Unit.

D. If a corporation, partnership, joint venture or other entity is the fee simple title holder to a Unit, or the Unit is owned by more than one person, the Unit owner shall designate one person as the Member entitled to cast votes and/or to approve or disapprove matters as may be required or provided for in these Articles, the Bylaws or the Declaration of Condominium.

E. Except as an appurtenance to his dwelling Unit, no Member can assign, hypothecate or transfer in any manner, his membership in the Association or his interest in the funds and assets of the Association. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be expended, held or used for the benefit of the membership and for the purposes authorized herein, in the Declaration, the Condominium Act and the Bylaws hereof.

ARTICLE V.

VOTING

A. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit in the Condominium. Such vote may be exercised or cast by the owner or owners of each Unit in such manner as may be provided in the Bylaws of this Association. Should any Member own more than one Unit, such Member shall be entitled to exercise or cast one vote for each such Unit, in the manner provided for in the Bylaws.

B. Until such time as the first property is submitted to the Condominium form of ownership by recordation of Declaration of Condominium therefor in the public records of Duval County, Florida, the membership of the Association shall be comprised of the subscribers to

these Articles, each of whom shall be entitled to cast a vote on all matters upon which the membership would be entitled to vote.

ARTICLE VI.

TERM OF EXISTENCE

Existence of the Association shall commence with the filing of these Articles with the Secretary of State, State of Florida. The Association shall have perpetual existence.

ARTICLE VII.

OFFICE

The principal office of the Association shall be 818 A-1-A North, Suite 203, Ponte Vedra Beach, Florida 32082, or such other place as the Board of Directors may designate.

ARTICLE VIII.

BOARD OF DIRECTORS

A. The business affairs of this Association shall be managed by the Board of Directors. The number of members of the first Board of Directors shall be three.

B. Subject to the Declaration of Condominium, the Board of Directors shall be elected by the members of the Association from among the membership at the annual membership meeting as provided in the Bylaws; provided, however, that the Developer shall have the right to elect all of the Directors on the Board subject to the following:

1. When Unit owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit owners other than the Developer shall be entitled to elect one-third (1/3) of the members of the Board of Directors.
2. Unit owners other than the Developer shall be entitled to elect a majority of the members of the Board of Directors upon the first to occur of the following:
 - (a) Three years after fifty percent of all of the Units in the Condominium have been conveyed to purchasers;
 - (b) Three (3) months after ninety percent (90%) of all of the Units in the Condominium have been conveyed to purchasers;
 - (c) When all the Units in the Condominium that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being

- offered for sale by the Developer in the ordinary course of business; or
- (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 recordation of the Declaration.
3. The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five (5%) percent of all of the Units in the Condominium.
 4. The names and residence addresses of the persons who are to serve as the initial Board of Directors until their successors are chosen, are as follows:

<u>Director</u>	<u>Address</u>
Robert Rouleau	818 A-1-A North, Suite 203 Ponte Vedra Beach, Florida 32082
Jack Caruso	345 Ponte Vedra Blvd. Ponte Vedra Beach, Florida 320822
Susan L. Best	2257 Eagles Nest Road Jacksonville, Florida 23246

ARTICLE IX.

OFFICERS

A. The officers of the Association shall be a President, one or more Vice Presidents, Secretary and Treasurer and, if any, the Assistant Secretaries and Assistant Treasurers, who shall perform the duties of such offices customarily performed by like officers of corporations in the State of Florida subject to the directions of the Board of Directors.

B. Officers of the Association may be compensated in the manner to be provided in the Bylaws. The Board of Directors, or the President with the approval of the Board of Directors, may employ a managing agent, agency, and/or other managerial and supervisory personnel or entity to administer or assist in the administration of the operation and management of the Condominium and the affairs of the Association, and any and all such persons and/or entity or entities may be so employed without regard to whether any such person or entity is a Member, Director or officer of the Association.

C. The persons who are to serve as officers of the Association until their successors are chosen are:

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<u>Officer</u>	<u>Name</u>
President/Treasurer	Robert Rouleau
Vice President/Secretary	Susan L. Best
Vice President	Jack Caruso

D. The officers shall be elected by the Board of Directors at their annual meeting as provided in the Bylaws. Any vacancies in any office shall be filled by the Board of Directors at any meeting duly held.

E. The President shall be elected from the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two offices, provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person. Officers shall be elected annually.

ARTICLE X.

AMENDMENT TO ARTICLES

A. For so long as the Developer is entitled to elect a majority of the members of the Board of Directors, the Articles can be amended upon adoption of a resolution by a majority of the members of the Board of Directors at a meeting of the Board of Directors.

B. After the Unit owners are entitled to elect a majority of the members of the Board of Directors, an amendment to the Articles shall be proposed by the Board of Directors after adopting a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote on the proposed amendment, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member entitled to vote at such meeting in accordance with the bylaws. The proposed amendment shall be adopted upon receiving at least Sixty Six and two thirds percent (66 and-2/3%) of the votes which members present at such meeting or represented by proxy are entitled to cast; or

If there are no members or if members are not entitled to vote on proposed amendments to the articles of incorporation, an amendment may be adopted at a meeting of the Board of Directors by a majority vote of the directors then in office.

C. Any number of amendments may be submitted and voted upon at any one meeting.

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H05000036183

ARTICLE XI.

BYLAWS

A. The Board of Directors shall adopt by a majority vote the original Bylaws of the Association which shall be subject to amendment in accordance with the procedures set forth in the Bylaws.

ARTICLE XII.

DISSOLUTION

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the District prior to such termination, dissolution or liquidation.

IN WITNESS WHEREOF, we, the undersigned subscribing incorporator has hereunto set its hand and seal this 31st day of January, 2005, for the purpose of forming this corporation not for profit under the laws of the State of Florida.



Robert Rouleau
818 A1A North, Suite 203
Ponte Vedra Beach, FL 32082

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing Articles of Incorporation were acknowledged before me this 31st day of January, 2005, by Robert Rouleau, who is personally known to me or produced N.A. as identification.

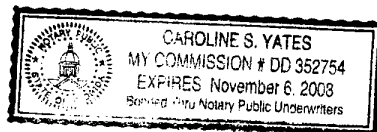


Notary Public, State of Florida

Name: Caroline S. Yates

My Commission Expires: 11-6-08

My Commission Number is: DD 352754



H05000036183

**CERTIFICATE NAMING AGENT
UPON WHOM PROCESS MAY BE SERVED**

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted:

That MARBELLA OWNERS ASSOCIATION, INC., a corporation duly organized and existing under the laws of the State of Florida, with its principal office, as indicated in the Articles of Incorporation at 818 A-1-A North, Suite 203, Ponte Vedra Beach, Florida 32082, has named Robert Rouleau, as its agent to accept service of process within this state.

Having been named to accept service of process for the above stated corporation, at the place designated in this certificate, I hereby accept to act in this capacity, and agree to comply with the provisions of said Florida Statute relative to keeping open said office. The registered office address is the same as the principal office address.



Robert Rouleau

H05000036183

EXHIBIT "E"

**BYLAWS
OF
MARBELLA OWNERS ASSOCIATION, INC.**

a Florida Corporation Not-For-Profit

1. IDENTITY.

1.1 **Applicability.** These are the Bylaws of **MARBELLA OWNERS ASSOCIATION, INC.** (the "Association"), a Florida corporation not for profit organized pursuant to the provisions of Chapters 617 and 718, Florida Statutes, as amended to the date of filing of the Articles of Incorporation. The purpose and object of the Association shall be to administer the operation and management of Marbella, A Condominium to be established in accordance with the Florida Condominium Act, Chapter 718, Florida Statutes ("Act"), upon certain real property in Duval County, Florida, as set forth in the Articles of Incorporation of the Association. The provisions of these Bylaws are applicable to the Condominium and are subject to the provisions of the Articles. All members of the Association, as defined in the Articles, and their invitees, including, without limitation, all present or future owners and tenants of Units in the Condominium and other persons using the Condominium or any of the facilities thereof in any manner, are subject to these Bylaws, the Articles and the Declaration.

1.2 **Office.** The initial office of the Association shall be at 818 A-1-A North, Suite 203, Ponte Vedra Beach, Florida 32082, or at such other place as may be established by resolution of the Board of Directors.

1.3 **Fiscal Year.** The fiscal year of the Association shall be the first day of January through the last day of December.

1.4 **Seal.** The seal of the Association shall bear the name of Marbella Owners Association, Inc., the word "Florida", the words "Corporation Not For Profit", and the year of incorporation.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES.

2.1 **Membership.** The qualification of members of the Association (the "Members"), the manner of their admission to membership and termination of such membership, and voting by Members, shall be as set forth in Article IV of the Articles, the provisions of which are incorporated herein by reference.

2.2 **Quorum.** A quorum at meetings of Members shall consist of persons entitled to cast one third (1/3) of the votes of the membership entitled to vote upon any matter or matters arising at said meeting.

2.3 **Voting.**

(a) Each Unit shall be assigned the right to cast one vote at any meeting of Members.

(b) If a Unit is owned by one person, his right to vote shall be established by the record title to his Unit.

(c) If any Unit is owned by more than one person or a partnership, corporation, trust, or any other association or entity, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit or by the President, general partner or other chief executive officer of the respective entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until ownership of the Unit is changed. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any owner of that Unit. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum nor for any other purpose.

2.4 **Vote Required.** Except as otherwise required under the provisions of the Articles, these Bylaws or the Declaration, or where the same otherwise may be required by law, at any meeting of the general membership of the Association, duly called and at which a quorum is present, the acts approved by the affirmative vote of a majority of the votes present at such meeting shall be binding upon the Members.

2.5 **Proxies.** Except as specifically otherwise provided herein or in the Condominium Act, Unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Land Sales, Mobile Homes and Condominiums (hereinafter referred to as the "Division"). Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with § 718.112(f)(2) for votes taken to waive financial requirements as provided by § 718.111(13); for votes taken to amend the declaration pursuant to § 718.110; for votes taken to amend the articles of incorporation or bylaws; and for any other matter for which the Act requires or permits a vote of the Unit owners. No proxy, limited or general, shall be used in the election of Board Members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this subparagraph, Unit owners may vote in person at Unit owner meetings.

Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. All such proxies shall be filed with the Secretary prior to or during the roll call of such meeting. 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 shall be revocable at any time at the pleasure of the Unit owner executing it.

3. **MEMBERS' MEETINGS.**

3.1 **Annual Meeting.** The annual meeting of the Members shall be held at the office of the Association or such other place in Duval County, and at such time as may be specified in the notice of the meeting, on the second (2nd) Thursday in March of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held on the

next succeeding Thursday, or such day as the Directors shall determine and include in the notice of meeting.

3.2 **Special Meeting.** Special meetings of the entire membership of the Association shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members entitled to cast a majority of the votes of the entire membership.

3.3 **Notice of Meetings.**

(a) **Generally.** Written notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member or class of Members, if any, unless waived in writing. Each notice shall state the time and place of and purpose for which the meeting is called and shall include an agenda and shall be mailed or delivered to each unit owner at least 14 days prior to the meeting. The Notice shall be posted at a conspicuous place on the Condominium property at least 14 continuous days preceding the meeting, except in the case of an emergency. Upon notice to the Unit owners, the Board shall by duly adopted rule designate a specific location on the condominium property upon which all notices of Unit owner meetings shall be posted. Unless a Unit owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each Unit owner. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes requiring mailed notice, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the Unit shall so advise the Association in writing, or if no address is given or the owners of the Unit do not agree, to the address provided on the deed of record. An officer of the Association, or the manager or other person providing notice of the Association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association affirming that the notice was mailed or hand delivered, in accordance with this provision, to each Unit owner at the address last furnished to the Association.

(b) **Annual.** Notice of the Annual Meeting shall be given to each Member not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the meeting, and shall be mailed by certified mail or delivered personally to each Member. If delivered personally, receipt of notice shall be signed by the Member, indicating the date received and shall constitute that Member's waiver of his right to receive notice by mail. If mailed, such notice shall be deemed properly given when deposited in the United States Mail addressed to the Member at his Post Office address as it appears on the records of the Association, and the post office certificate of mailing shall be retained as proof of such mailing.

(c) **Special.** Notice of Special Meetings shall be given to each Member not less than fourteen (14) days prior to the date set for the meeting and shall be mailed by regular mail or delivered personally to the Member and shall be posted conspicuously on the Condominium Property.

(d) **Waiver.** Any Member may, in writing signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before, at or after the holding of the meeting, shall constitute notice to such Member.

(e) **Adjourned Meetings.** If any meeting of Members cannot be held because a quorum is not present, or because a greater percentage of the membership required to constitute a quorum for a particular purpose is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, the Bylaws or the Declaration, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance, if greater than a quorum, is present.

3.4 **Presiding Officer and Minutes.** At meetings of Members, the Chairman of the Board, or in his absence, the President, shall preside, or in the absence of both, the Members present shall select a chairman of the meeting. Minutes shall be kept in a business like manner and available for inspection by Directors, Unit owners and their authorized representatives during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven years.

3.5 **Order of Business.** The order of business at annual meetings of Members, and, as far as practical, at other meetings of Members, shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading or waiver of reading of minutes of previous meeting of Members;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Appointment by Chairman of inspectors of election;
- (g) Election of Directors;
- (h) Unfinished business;
- (i) New business;
- (j) Adjournment.

4. **BOARD OF DIRECTORS.**

4.1 **First Board and Developer Control.** The affairs of the Association shall be managed by a Board of Directors. The first Directors shall consist of three (3) persons as designated in the Articles of Incorporation. Sofran Marbella, Ltd., a Florida limited partnership,

“Developer,” reserves the right to appoint Directors to the Board as specified in Article VIII (B) of the Articles.

4.2 **Election of Directors.** Directors shall be elected in the following manner:

- (a) Commencing with the election of the Board to succeed the first Board as designated in the Articles, Developer shall appoint that number, and the identity, of the Members of the Board which it shall be entitled to appoint in accordance with the Articles and these Bylaws, and upon such appointment by Developer, by written instrument presented to the meeting at which such election is held, the persons so appointed by Developer shall be deemed and considered for all purposes Directors of the Association and shall thenceforth hold the offices and perform the duties of such Directors until their successors shall have been elected or appointed, as the case may be, and qualified in accordance with the provisions of these Bylaws.
- (b) For so long as the Developer shall retain the right to appoint at least one member of the Board of Directors, all Members of the Board of Directors whom Developer shall not be entitled to appoint under these Bylaws shall be elected at large, by a plurality of the votes cast at the annual meeting of the general membership, immediately following appointment of the Members of the Board whom Developer shall be entitled to appoint. Commencing with the first annual election of Directors after the Developer shall have lost or relinquished the right to appoint at least one Director, the Members shall elect three (3) Directors, by a plurality of the votes cast at the annual meeting of the general membership.
- (c) Vacancies on the Board may be filled, through the unexpired term thereof, as set forth in 4.2(e) below, except that, should any vacancy on the Board be created in a directorship previously filled by any person appointed by Developer, such vacancy shall be filled by Developer appointing by written instrument delivered to any officer of the Association, the successor Director, who shall fill the vacated directorship for the unexpired term thereof.
- (d) In the election of Directors, there shall be appurtenant to each Unit one (1) vote for each Director to be elected provided, however, that no Member or owner of any Unit may cast more than one vote for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative.
- (e) After Unit owners other than the Developer are entitled to elect a Member or Members of the Board of Directors of the Association, the Board of Directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of directors, either

in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each Unit owner entitled to vote, 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 of the Association not less than forty (40) days before a scheduled election. The Association shall then mail or deliver a second notice of the meeting to all Unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than eight and one-half (8 ½) inches by eleven (11) inches, furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association, however, the Association shall have no liability for the contents of such information sheets prepared by the candidates. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters must cast a ballot in order to have a valid election. No Unit owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A Unit owner who needs assistance in casting the ballot for the reasons stated in Florida Statutes, Section 101.051 may obtain assistance in casting the ballot. Any Unit owner violating this provision may be fined by the Association in accordance with Florida Statutes, Section 718.303. The regular election shall occur on the date of the annual meeting. Notwithstanding the above provision, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than there are vacancies on the Board.

- (f) Until such time as the Members are entitled to elect all of the Directors, each Director shall serve for one year until the next annual meeting or such other time as his successor is elected. At the first annual meeting at which the Unit Owners are entitled to elect all of the Members of the Board of Directors, one directorship shall be designated as a two-year term director and the other two shall be for one-year terms. At the next succeeding annual meeting, one of such one-year term directorships shall be, from that point on, designated as a two-year term directorship. The intent hereof is to stagger the terms of the directorships so that there shall be only two directors elected each year with one member of the old Board continuing on the new Board. Therefore, there shall be two directorships of two year terms being up for election in different years, and the third directorship shall always remain a one-year term directorship.
- (g) In the event that Developer selects any person or persons to serve on the Board, Developer shall have the absolute right at any time, in its sole

discretion, to replace any such person or persons with another person or other persons to serve on the Board. Replacement of any person or persons designated by Developer to serve on any Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name or names of the person or persons designated as successor or successors to the persons so removed from the Board. The removal of any Director and designation of his successor shall be effective immediately upon delivery of such written instrument by Developer to any officer of the Association.

4.3 **Organizational Board Meeting.** The organizational meeting of a newly elected or designated Board shall be held within fifteen (15) days of their election or designation, at such time and place as shall be fixed at the meeting at which they were elected. Notice of the organizational meeting shall be provided by posting such notice conspicuously on the condominium property at least 48 hours prior to such meeting. The Notice shall contain a list of all agenda items to be considered at the meeting.

4.4 **Board Meetings in General.** Meetings of the Board of Directors and any committee thereof at which a quorum of the Members of that committee are present shall be open to all Members. Notice of meetings shall be posted conspicuously in the Condominium at least forty-eight (48) continuous hours in advance for the attention of Unit owners, and shall include an identification of agenda items, except in an emergency. Any item not included on the Notice may be taken up on an emergency basis by at least a majority plus one of the Members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Any Unit owner may tape record or videotape meetings of the Board of Directors. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The Association shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit owner statements. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items. Notwithstanding the foregoing, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding Unit use, will be proposed, discussed or approved shall be mailed or delivered to the Unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the secretary and filed among the official records of the Association. 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.

4.5 **Regular Board Meeting.** Regular meetings of the Board 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 telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of one-third of the Directors. Except in an emergency, not less than two (2) days notice of a special meeting shall be given to each

Director, personally or by mail, telephone or telegram, which notice shall state the time, place and purpose of the meeting. 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.

4.7 **Board Minutes.** Minutes of all meetings of the Board shall be kept in a businesslike manner and available for inspection by Unit owners and Directors during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven years.

4.8 **Waiver of Notice.** Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

4.9 **Quorum.** A quorum at meetings of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as may be specifically otherwise provided in the Articles, these Bylaws or the Declaration. If any meeting of the Board cannot be held because a quorum is not present, or because the greater percentage of the Directors required to constitute a quorum for particular purposes is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, these Bylaws or the Declaration, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance, if greater than a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

4.10 **Removal.** Directors may be removed from office with or without cause by the vote or written agreement of a majority of all Unit owners, provided, however, that only the Developer can remove a member of the Board who was appointed by the Developer.

4.11 **Presiding Officer.** The presiding officer of meetings of the Board shall be the Chairman of the Board, if such officer has been elected, or, if not, the President of the Association. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

4.12 **Powers and Duties.** All of the powers and duties of the Association shall be exercised by the Board, including those existing under the laws of Florida, the Articles, these Bylaws and the Declaration. Such powers and duties shall be exercised in accordance with the Articles, these Bylaws and the Declaration, and shall include, without limitation, the right, power and authority to:

- (a) Make, levy and collect assessments, including without limitation assessments for reserves and for betterments to Condominiums and/or Association property, against Members and Members' Units to defray the costs of the Condominium and the property owned by the Association and use the proceeds of assessments in the exercise of the powers and duties of the Association;

- (b) Maintain, repair, replace, operate and manage the Condominium Property wherever the same is required to be done and accomplished by the Association for the benefit of Members;
- (c) Repair and reconstruct improvements after casualty;
- (d) Make and amend regulations governing the use of the property, real and personal, in the Condominium, and such property owned by the Association provided, that such regulations or amendments thereto shall not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles and Declaration, and to impose fines for violations of such rules and regulations;
- (e) Acquire, own, hold, operate, lease, encumber, convey, exchange, manage, and otherwise trade and deal with property, real and personal, including Units, of and in the Condominium, as may be necessary or convenient in the operation and management of the Condominium, and in accomplishing the purposes set forth in the Declaration;
- (f) Contract for the management and maintenance of the condominium property and Association property and to authorize a management agent to assist the Association in carrying out its powers and duties, including but not limited to the performance of 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 and property owned by the Association with funds as shall be made available by the Association for such purposes. Any such contract shall be terminable for cause upon the giving of thirty (30) days prior written notice, and shall be for a term of from one (1) to three (3) years. Any such contract shall be renewable by consent of the Association and the management. If such contract is negotiated by the Developer, the term of such contract shall not exceed one (1) year. The Association and its officers shall, however, retain at all times the powers and duties granted by 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;
- (g) Enforce by legal means the provisions of the Articles, these Bylaws, the Declaration and all regulations governing use of property of and in the Condominium hereafter adopted;
- (h) Pay all taxes and assessments which are liens against any part of the Condominium other than Units and the appurtenances thereto, and assess the same against the Members and their respective Units subject to such liens;

- (i) Carry insurance for the protection of Members and the Association against casualty and liability, including Directors' liability insurance;
- (j) Pay all costs of power, water, sewer and other utility services rendered to the Condominium or to the Association and not billed to the owners of the separate Units;
- (k) Employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association;

4.13 **Liability and Indemnification of Officers and Directors.** The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such person in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee Member, whether or not such person holds such position at the time such expenses are incurred. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such person in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee Member, or former officer, director or committee Member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

5. **OFFICERS.**

5.1 **Generally.** The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President shall be elected from the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person. The Board may from time to time elect such other officers, and designate their powers and duties, as the Board may deem necessary to properly manage the affairs of the Association. Officers may be removed from office by the Board.

5.2 **President.** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation not for profit, including but not limited to the power to appoint committees from among the Members from time to time, as he may in his discretion determine appropriate, to

assist in the conduct of the affairs of the Association. He shall have such additional powers as the Board may designate.

5.3 **Vice-President.** The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Board and the Members. He shall attend to the affairs of the Association. He shall have such additional powers as the Board may designate.

5.5 **Treasurer.** The Treasurer shall have custody of all of the property of the Association including funds, securities and evidences of indebtedness. He shall keep the assessment roll and accounts of the Members; he shall keep the books of the Association in accordance with good accounting practices, and he shall perform all other duties incident to the office of Treasurer.

5.6 **Compensation.** No compensation shall be paid to any officer of the Association except with the approval of a majority of the membership, reflected by a vote taken at a duly constituted membership meeting. No officer who is appointed by the Developer shall receive any compensation for his services as an officer. Nothing herein shall be construed so as to prohibit or prevent the Board of Directors from employing any director or officer as an employee of the Association at such compensation as the Board shall determine, nor shall anything herein be construed so as to preclude the Board from contracting with a director or officer or with any corporation in which a director or officer of the Association may be stockholder, officer, director or employee, for the management of the Condominium for such compensation as shall be mutually agreed between the Board and such officer, director or corporation, for the purpose of making available to the owners of condominium Units such services as are contemplated by the provisions of Article as is of these Bylaws. It is expressly contemplated that the first Board of Directors may enter into such contracts with persons who are initial officers or directors of the Association, or with corporations having officers, directors or employees who are also Members of the first Board of Directors of the Association.

6. **FISCAL MANAGEMENT.**

The provisions for fiscal management of the Association set forth in the Declaration of Condominium and Articles of Incorporation shall be supplemented by the following provisions:

6.1 **Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with standard accounting procedures and the Florida Condominium Act. Written summaries shall be supplied at least annually to Members. Such records shall include, but not be limited to:

- (a) A record of all receipts and expenditures.
- (b) An account for each Unit which shall designate the name and address of the Unit owner, the amount of each assessment, dates and amounts in

which the assessments come due, the amounts paid upon the account and the balance due.

6.2 **Inspection of Books.** Financial reports and the membership records shall be maintained in the office of the Association and shall be available to Members for inspection during normal business hours. The Association shall issue an annual financial report to Unit owners pursuant to Section 718.111(13), Florida Statutes.

6.3 **Annual Budget.** The Board shall adopt, for, and in advance of, each fiscal year, a detailed budget showing the estimated cost of performing all of the functions of the Association for the year showing amounts budgeted by accounts and expense classification. Each budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the common expenses, which shall include without limitation, expenses listed in Florida Statutes, Section 718.504(21), the cost of operating and maintaining the Common Elements, taxes on Association property, wages and salaries of Association employees, management, legal and accounting fees, office supplies, public utility services not metered or charged separately to Units, premiums for insurance carried by the Association and any reserve accounts and/or funds which may be established from time to time by the Board. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from the owner(s) of each Unit and due date(s) and amounts of installments thereof.

In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, if applicable, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement costs exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to budgets in which the Members of an association have, by a vote of the majority of the Members present at a duly called meeting of the Association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by Developer to Unit owners other than Developer pursuant to Florida Statutes, Section 718.301, Developer may vote to waive the reserves for the first two fiscal years of the operation of the Association, beginning with the fiscal year in which the Declaration is recorded, which vote must be taken each fiscal year. After the first two fiscal years reserves may only be waived or reduced upon the vote of a majority of nondeveloper voting interests present at a duly called meeting of the Association. If a meeting of the 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.

Reserve funds and any interest accruing thereon shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests present at a duly called meeting of the Association. Prior to turnover of control of an association by Developer to unit owners other than Developer

pursuant to Section 718.301, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

Copies of the proposed budget and proposed assessments shall be transmitted to each Member at least fourteen (14) days prior to the meeting of the Board of Directors at which the budgets will be considered, together with a notice of the time and place of said meeting, which shall be open to Unit owners. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or a manager or other person providing notice of the meeting and filed among the official records of the association. If any budget is subsequently amended, a copy shall be furnished each affected Member. Delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

6.4 **Amount of Budget.** If a budget is adopted by the Board which requires assessment of the Unit owners in any budget year exceeding 115% of such assessments for the preceding budget year, upon written application of ten percent (10%) of the Unit owners, a special meeting of the Unit owners shall be held upon not less than ten (10) days written notice to each Unit owner, but within thirty (30) days of the delivery of such application to the Board or any member thereof, at which special meeting Unit owners may consider only and enact only a revision of the budget, or recall any and all Members of the Board and elect their successors. Any such revision of the budget shall require a vote of not less than two-thirds (2/3) of the votes of all Unit owners. The Board may, in any event, first propose a budget to the Unit owners at any such meeting of Members or by writing, and if such budget or proposed budget be approved by a majority of the votes of all Unit owners either at such meeting or by writing, such budget shall not thereafter be reexamined by the Unit owners in the manner herein above set forth. If a meeting of the Unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

In determining whether assessments exceed 115% of similar assessments in the prior budget year, there shall be excluded from the computation reasonable reserves made by the Board in respect of repair and replacement of Condominium or Association property, or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis; and there shall be excluded from such computation assessments for betterments to the Condominium or Association property. Provided, however, that so long as Developer is in control of the Board of Directors the Board shall not impose an assessment for a budget year greater than 115% of the prior budget year's assessment without approval of a majority of the votes of all Unit owners.

6.5 **Notice of Adopted Budgets.** Upon adoption of budgets, the Board shall cause written copies thereof to be delivered to all Unit owners. Assessments shall be made against

Unit owners pursuant to procedures established by the Board, and in accordance with terms of the Declaration and Articles. Provided, however, that the lien or lien rights of the Association shall not be impaired by failure to comply with procedures established pursuant to these Bylaws.

6.6 **Assessments.** Unless otherwise determined by the Board of Directors, assessments shall be payable monthly on the first day of each calendar month. Assessments shall be made not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the fiscal year for which an amended assessment is made shall be payable in equal installments through the end of the fiscal year; provided, nothing herein shall serve to prohibit or prevent the Board of Directors from imposing a lump sum assessment in case of any immediate need or emergency.

6.7 **Special Assessments.** Special assessments, other than special assessments to meet shortages or emergencies, shall be approved by the Members at a duly convened meeting and shall be levied and paid in the same manner as heretofore provided for regular assessments. Special assessments to meet shortages or emergencies can be adopted by the Board of Directors and written notice thereof given to the member or Members affected thereby. Special assessments can be of two kinds: (i) those chargeable to all Members of the Condominium in the same proportions as regular assessments to meet shortages or emergencies, to construct, reconstruct, repair or replace all or any part of the Common Elements (including fixtures and personal property related thereto); and (ii) and for such other purposes as shall have been approved by the Members at a duly convened meeting.

6.8 **The Depository.** The depository of the Association shall be such bank or banks or savings and loan association or associations as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks or withdrawals signed by such persons as are authorized by the directors, provided that any management agreement may include in its provisions authority for the Manager to sign checks on behalf of the Association for payment of the obligations of the Association.

6.9 **Audit.** An audit of the accounts of the Association may be made from time to time as directed by the Board of Directors.

6.10 **Fidelity Bonds.** The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its

management at any one time. As used in this section, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks, and the president, secretary, and treasurer of the Association. The Association shall bear the cost of bonding.

6.11 **Transfer Fees.** No charge shall be made by the Association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a Unit.

7. **PARLIAMENTARY RULES.**

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation, or these Bylaws.

8. **AMENDMENTS TO BYLAWS.**

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

8.1 **Proposal.** Amendments to these Bylaws may be proposed by the Board, acting upon a vote of a majority of the Directors, or by Members owning a majority of the Units in the Condominium, whether meeting as Members or by instrument in writing signed by them.

8.2 **Notice.** Upon any amendment or amendments to these Bylaws being proposed by the Board or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or acting chief executive officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than fourteen (14) days nor later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the Members is required as herein set forth; provided, that proposed amendments to the Bylaws may be considered and voted upon at annual meetings of the Members.

8.3 **Content of Amendment.** No Bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws 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 bylaw. See bylaw . . . for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

8.4 **Voting.** In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of two-thirds of the votes present at a regular or special meeting at which a quorum is present. Thereupon, such amendment or amendments to these Bylaws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of Duval County, Florida, within

fifteen (15) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

8.5 **Written Vote.** At any meeting held to consider such amendment or amendments to these Bylaws, the written vote of any Member shall be recognized if such Member is not present at such meeting in person or by proxy, provided such written vote is delivered to the Secretary at or prior to such meeting.

8.6 **Developer's Reservation.** Notwithstanding the foregoing provisions of this Article 8, no amendment to these Bylaws which shall abridge, amend or alter the right of Developer to designate Members of the Board of Directors of the Association, as provided in Article 4 hereof, or any other right of the Developer provided herein or in the Articles of Declaration, may be adopted or become effective without the prior written consent of Developer.

8.7 **Proviso.** Provided, however, that no amendment shall discriminate against any condominium Unit owner nor against any condominium Unit or class or group of Units unless the condominium Unit owners so affected shall consent. No amendment shall be made that is in conflict with the Condominium Act, the Declaration of Condominium, or the Articles of Incorporation.

8.8 **Proviso.** Anything herein to the contrary notwithstanding, until the first regular election of Directors by the membership, and so long as the Developer shall have the right to fill vacancies on the Board of Directors, an amendment shall require only the unanimous consent of the Board of Directors, and no meeting of the condominium Unit owners nor any approval thereof need be had.

8.9 **Arbitration.** In the event of internal disputes arising from the operation of the Condominium among Unit owners, associations, and their agents and assigns, the parties must comply with mandatory non-binding arbitration in accordance with Florida Statutes, Section 718.1255.

9. **RECALL OF BOARD MEMBERS.**

Subject to the provisions of Florida Statutes, Section 718.301, any member of the Board of Directors may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the Unit owners to recall a Member or Members of the Board of Directors may be called by ten percent (10%) of the voting interests giving notice of the meeting in the same manner as required for a meeting of Unit owners, and the notice shall state the purpose of the meeting.

9.1 If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided herein. The board shall duly notice and hold a board meeting within 5 full business days of the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

9.2 If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

9.3 If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in ss. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to ss. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days of the effective date of the recall.

9.4 If the board fails to duly notice and hold a board meeting within 5 full business days of service of an agreement in writing or within 5 full business days of the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

9.5 If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.

10. CERTIFICATE OF COMPLIANCE.

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

11. POWER TO CONVEY COMMON ELEMENTS.

11.1 The Association shall have a limited power to convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right-of-way


expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

11.2 In any case where the Bylaws are silent as to the association's power to convey common elements as described in subparagraph 11.1, the Bylaws shall be deemed to include the provision described in subparagraph 11.1.

The foregoing were adopted as the Bylaws of MARBELLA OWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at the first meeting of the Board of Directors on the 4th day of February, 2005.


Secretary

APPROVED:


President

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